

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

IN RE:
Thomas K. Disalvo
License No. 025.0009574

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Docket No. 2011-36

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by State Prosecuting Attorney Gabriel M. Gilman, and the Respondent, Thomas K. Disalvo, represented by Ted Kenney, Esq., who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("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. Thomas K. Disalvo ("Respondent") of Swanton, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse (LPN) under license number 025.0009574. This license was originally issued on or about July 11, 2008 and is currently set to expire on or about January 31, 2014.
3. At all times relevant hereto, Respondent was employed as a Licensed Practical Nurse at St. Albans Healthcare and Rehabilitation Center ("the Facility") in St. Albans, Vermont
4. Respondent's position at the Facility placed him in a supervisory relationship to a number of licensed nursing assistants, nearly all female.
5. At a number of times during his employment at the Facility, Respondent subjected female LNAs under his supervision to persistent, crude sexual commentary.
6. At least twice during his employment at the Facility, Respondent subjected female LNAs to unwanted sexualized touching.

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7. On or about January 1, 2011, Respondent was working with two female LNAs, M.I. and T.B. Respondent made sexually inappropriate commentary to both LNAs.
8. On or about January 2, 2011, Respondent was again working with M.I. and T.B. As T.B. was seated placing socks on a resident's feet, Respondent approached her and placed his hands on T.B.'s legs, pushing them apart. T.B. stood up and faced the resident, whereupon Respondent commented that the new position also was a good one, grabbed T.B. by the hips from behind, and pulled her toward him.
9. Later on January 2, 2011, Respondent observed M.I. pushing T.B. in a wheelchair. Respondent suggested that M.I. put T.B. in an open room so that he could "examine" her and "check for any open areas."
10. On or about January 5, 2011, while on duty at the Facility, Respondent grabbed the buttocks of LNA E.F. in a sexual manner.
11. When confronted with the allegations in this matter, Respondent was forthright about a majority of the related events. Respondent acknowledges that the described conduct, whether welcome or unwelcome, represents a serious and unacceptable deviation from minimum standards of acceptable and prevailing practice.

Violations

12. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of:
 - a. 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 ... failure to conform to the essential standards of acceptable and prevailing practice);
 - b. 3 V.S.A. § 129a(a)(3) (Failure to comply with provisions of federal or state statutes or rules governing the practice of the profession); and
 - c. 3 V.S.A. § 129a(a)(7) (Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.).

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Understandings

13. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove at least some of charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary and appropriate.
14. 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.
15. 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.
16. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
18. 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.
19. 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.
20. 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. Respondent's license is hereby **CONDITIONED** for a **MINIMUM OF TWO (2) YEARS** and until further order of the Board, upon the following terms:

(1) Re-issue of License.

Upon entry of this Order, Respondent shall be issued a license labeled "active-conditioned."

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(2) Length of Time Conditions Imposed.

These 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 two (2) years** 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 fifty (50) hours per week during the conditional licensing period.

(3) Notification to Employers/Nursing School.

Upon reinstatement, the 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 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, 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 Directors.

Within one (1) month the entry of this Consent Order 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, conduct, and attendance during that month. These reports shall be submitted in writing on forms issued by the Board. Each employer report must specifically comment upon Respondent's professionalism and conduct toward co-employees. All employer reports shall indicate satisfactory performance, conduct, and attendance.

In the event 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, conduct, and attendance. These reports shall be submitted in writing on forms issued by the Board. All nursing program reports shall indicate satisfactory performance, conduct, and attendance.

(5) Practice Under Supervision.

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

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(6) Remedial Coursework

Respondent shall demonstrate to the Board's satisfaction that he has successfully completed at least three continuing-education courses approved by the Board or its designee as sufficient and reasonably related to sexual harassment, nursing ethics, and professionalism. One course must be completed within one (1) month of entry of this Order; a second must be completed within four (4) months of entry of this Order; and a third must be completed within nine (9) months of entry of this Order. The Board or its designee will identify and recommend specific courses and course providers upon Respondent's request. Courses offered to satisfy this condition must be pre-approved by the Board. Courses taken without specific, prior approval will not be recognized.

(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 requiring a nursing or nursing assistant license 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.

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.

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

Within ten (10) days of the date of entry, 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 (including resignation or termination), 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 inactive status of his Vermont nursing license within thirty (30) days of the date of entry of this Order. If the Respondent seeks reinstatement then 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 reinstatement. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

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(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, including the costs of remedial coursework.

(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. Such a petition must be filed in writing with the docket clerk. It shall be Respondent's burden to demonstrate full compliance with the terms of this Order and to demonstrate rehabilitation sufficient for the Board to find that relief from conditions would not jeopardize the public health, safety, and welfare, or the integrity of the nursing profession. After evaluating Respondent's petition, the Board may undertake additional investigation, may conduct a hearing to take additional evidence, and may, on the basis of the evidence of rehabilitation presented, relieve Respondent of some, all, or none of the above conditions.

- 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.

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AGREED TO:

Dated: 1/11/12

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Gabriel M. Gilman
State Prosecuting Attorney

Thomas K. Disalvo
RESPONDENT

Dated: 1/11/2012

By: [Signature]
Thomas K. Disalvo

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 1/11/2012

By: [Signature]
Ted Kenney, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 1/14/2013

By: [Signature]
Chairperson

Date of Entry: 1/14/13

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