

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

IN RE:)
ROBIN LEE DUFAULT)
License No. 025.0008835)

Docket Nos. 2012-404,
M2013-102

REINSTATEMENT STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by State Prosecuting Attorney Gabriel M. Gilman, and the respondent in this matter, Robin Lee Dufault ("Respondent"), who stipulate and agree as follows:

Facts

1. Respondent's license was suspended indefinitely upon her default in docket no. 2012-404, attached hereto for reference as Exhibit A. Respondent has since contacted the State, and the parties have agreed to reinstatement upon the terms set out in the Consent Order below.
2. Respondent has been advised that she may directly petition the Board for reinstatement if she finds objectionable the terms offered by the State; however, Respondent finds the terms fair.
3. The State is authorized to represent that the investigative team supports the terms contained in the Consent Order set out below.

Understandings

4. Respondent acknowledges that the facts above are true and that the conditions set out in the Consent Order below are appropriate to protect the public.
5. 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.
6. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudice Respondent's right to a fair and impartial hearing if this agreement is not accepted by the Board and proceeds to a contested hearing.
7. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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8. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
9. 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.
10. Respondent voluntarily waives Respondent's right to a contested reinstatement hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
11. Respondent agrees that the Order set forth below may be entered by the Board.

CONSENT ORDER

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

- A. The Board of Nursing hereby **REINSTATES** Respondent's eligibility for licensure, and **CONDITIONS** the license as follows:

(1) Re-issuance of License.

At such time as Respondent is otherwise eligible for licensure, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time of Conditions Imposed.

Respondent shall be subject to the conditions until Respondent completes a **minimum of one (1) year** of supervised nursing in which Respondent works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of fewer than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than fifty (50) hours per week.

(3) Continuing Education.

Respondent shall complete continuing education through the NCSBN Learning Extension, specifically: (a.) *Medication Errors: Detection & Prevention* (6.9 contact hours) and (b.) *Documentation: A Critical Aspect of Client Care* (5.4 contact hours). Respondent shall provide documentation of successful completion to the Board's case manager within three (3) months of the entry of this Order.

(4) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Stipulation and Consent Order, including the underlying Order, Exhibit A, 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.

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In the event 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.

(5) Reports from Employers/Program Director.

Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer 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.

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

(6) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has on-site supervision for the entire shift by a licensed registered nurse in good standing with the Board.

(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 Respondent can still comply with the provisions of this Consent Order.

If Respondent receives discipline on a nursing license held in another state during the conditioned period, 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 Respondent's 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.

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(9) Notification to Other States.

In the event Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.

(10) License Renewal.

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

(11) Costs.

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

(12) Violation of this Order.

If Respondent violates the terms of this Order in any respect, the Board, after giving 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 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, Respondent may petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order and that the conditions above are not necessary to protect the public. If there is any complaint pending against Respondent's license at the time of the petition, the conditions may be maintained in place until that complaint is resolved.

- B. Notwithstanding any provision above, 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:

1/13/14

STATE OF VERMONT
SECRETARY OF STATE

By:

Gabriel M. Gilman
State Prosecuting Attorney

ROBIN LEE DUFALT
RESPONDENT

By:

Robin Lee Dufault
Robin Lee Dufault

Dated:

1-10-14

APPROVED AND SO ORDERED:

Dated:

1-13-2014

VERMONT BOARD OF NURSING

By:

Ellen Wal
Chairperson

Date of Entry:

1/13/14

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Montpelier, VT

STATE OF VERMONT
BOARD OF NURSING

In re: Robin Lee Dufault
License No. 025-8835

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Docket No. 2012-404(LPN)

Appearances:

Prosecuting the case: Gabriel Gilman
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board held a hearing on the above matter on August 12, 2013 at the Office of Professional Regulation conference room at the City Center in Montpelier, Vermont. Ms. Dufault did not attend and was not represented by counsel.

Findings of Fact

1. Ms. Dufault is licensed as a practical nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 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 June 21, 2013 Ms. Dufault was sent a Notice of Charges in this matter by certified mail to her 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).
5. Stamps on the envelope indicate the notice of charges was unclaimed.
6. Ms. Dufault has not filed an answer to the charges.
7. On July 25, 2013 notice of the Default Hearing scheduled for this date was mailed to Ms. Dufault at that same address by certified mail. The file shows no return on this mailing.
8. Ms. Dufault has still not answered the charges.
9. Upon hearing the Prosecution's presentation and taking notice of its own file, the Board finds Ms. Dufault to be in Default. The allegations contained in the 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

Ms. Dufault has received adequate or constructive notice of the charges in this matter as



indicated by the Board's file and the Prosecution's presentation. Because Ms. Dufault has failed to answer the charges, the factual allegations in the Stipulation and Consent Order 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 Ms. Dufault has engaged in the unprofessional conduct alleged in the Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Ms. Dufault's license is hereby **Suspended Indefinitely**, effective as of the date of the hearing. Should Ms. Dufault apply for reinstatement, the Board at that time will determine whether any conditions can permit her to resume practice while protecting public health and safety.

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, 89 Main St., Fl. 3, 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:


Jeanine Carr, RN, Chair

Date: August 12, 2013

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/13/13

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

IN RE:
ROBIN LEE DUFAULT
License No. 025.0008835

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Docket No. 2012-404

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Robin Lee Dufault, LPN:

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. Robin Lee Dufault (the "Respondent") of Mineville, New York is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008835. This license was originally issued on or about October 3, 2005 and expires on January 31, 2014.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Birchwood Terrace Healthcare (the "Facility") in Burlington, Vermont.
4. On or about May 31, 2012, Respondent was responsible for a patient on orders to remain NPO. J.J., the LPN coming on for the subsequent shift specifically asked if the patient had remained NPO. Respondent indicated, "Yes." Residents then reported that the patient had just received her morning pill. J.J. asked Respondent if this were true, and Respondent replied, "She was harassing me, what was I supposed to do?"
5. On or about June 26, 2012, Respondent was working the overnight shift. A patient Respondent was caring for, J.B., fell during the night. Respondent failed to document the fall or communicate to the day shift that J.B. had fallen. Respondent also did not immediately document an event assessment or care plan update in J.B.'s medical record. The unit manager had to contact Respondent at home to verify that the fall had occurred and to have late documentation of the event created.
6. On or about July 4 through 5, 2012, Respondent was working the overnight shift. Respondent failed to make nursing notes during the shift. At the end of her shift,

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Respondent reported to the day nurse that patient G.B. had low oxygen saturation during the night. Respondent had failed to document G.B.'s condition.

7. On the same shift, at 2330, Respondent signed out 20mg oxycontin for S.H. S.H. was prescribed 10mg every four hours and 10mg pm. Another LPN subsequently questioned Respondent, because S.H. was to receive a scheduled dose at 2030, making it impossible that 20mg would be an appropriate administration at 2330. Respondent first indicated that she gave the scheduled and PRN doses together, saying, "Yes, was I not supposed to do that?" Respondent later gave a different history, explaining that she gave the patient 10mg at 1330, followed by another 10mg at 0530. Respondent then changed the narcotic sheet to reflect two separate doses of 10mg oxycontin.
8. Respondent provided a written response to OPR Investigator Marie Beland relative to the above events and allegations. Respondent explained that the allegations were unfair because the facility was understaffed during her shift, leaving her to care for more patients than she could manage. Respondent reported that she repeatedly requested the assistance of an additional nurse on her shifts, but that she had been told to "tough it out."

Charges

9. 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(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
 - b. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by any reason of any cause) which includes failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Rule 11.2(b)(2).

Relief Requested

WHEREFORE, the license of Robin Lee Dufault should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 21st day of June, 2013.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Gabriel M. Gilman
State Prosecuting Attorney

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