

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

IN RE: BARBARA DYKE, R.N.) **DOCKET No. NU38-1204**
License No. 026-0023378)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Barbara Dyke, R.N., who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.

Statement of Facts

2. Barbara Dyke (the "Respondent") of Claremont, New Hampshire is a registered nurse holding license number 026-0023378, issued by the State of Vermont. This license was originally issued on or about May 21, 1997, and it expired on March 31, 2005.

3. The Respondent's license has been suspended since February 14, 2005 pursuant to a Summary Suspension Order entered by the Board of Nursing. This discipline was based upon the facts below.

4. At all relevant times, the Respondent was practicing as a registered nurse and worked at the Cedar Hill Nursing Home (the "Facility") located in Windsor, Vermont. Respondent was terminated from employment at the Facility on November 30, 2004.

5. Prior to the summary suspension hearing, the Respondent was on a Stipulation and Consent Order dated November 7, 2001 that required the Respondent to abstain completely from the consumption of any drugs and alcohol.

6. On or about October 2, 2004, the Respondent had a seizure at the Facility. On December 22, 2004, the Respondent admitted to Investigator Steve Kennedy

STATE OF VERMONT



**Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107**

that she had been consuming alcohol the night before the seizure and that she had started drinking alcohol again in the summer of 2004.

7. On or about September 25, 2004, the Respondent made a transcription error involving morphine sulfate by not transcribing the order to the Medication Administration Record. The Respondent did not properly waste the residual morphine.

Charges

8. The above facts and circumstances, alone or in combination, violate: 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); 3 V.S.A. § 129a(a)(4)(failing to comply with an order to of the board or violating any term or condition of a license restricted by the board). 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is habitually intemperate); 26 V.S.A. § 1582(a)(6)(has a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care).

Understandings

9. 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.

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

11. Respondent voluntarily enters 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 her right to a contested hearing before the Board of Nursing.

13. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

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Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because Respondent violated: 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); 3 V.S.A. § 129a(a)(4)(failing to comply with an order to of the board or violating any term or condition of a license restricted by the board). 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is habitually intemperate); 26 V.S.A. § 1582(a)(6)(has a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care).

B. The Board of Nursing hereby **SUSPENDS THE RESPONDENT'S LICENSE INDEFINITELY**. Before applying for reinstatement, Respondent must obtain (1) **an independent evaluation report by a licensed professional specializing in substance abuse pre-approved by the Board**; and (2) the results of the treatment the substance abuse evaluator must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients. Once reinstated, her license will be conditioned and limited pursuant to the Laws of the State of Vermont and the Rules of this Board. Additionally, the Respondent may not apply for reinstatement for a minimum period of one (1) year.

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 the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

STATE OF VERMONT

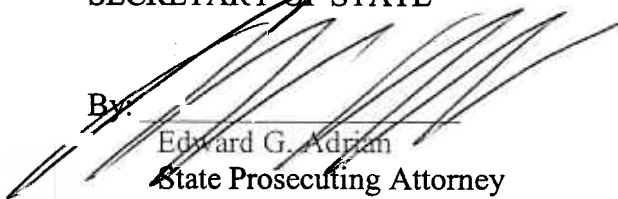


Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

AGREED TO:

Dated: 6/9/05

STATE OF VERMONT
SECRETARY OF STATE

By: 

Edward G. Adrian
State Prosecuting Attorney

BARBARA DYKE
RESPONDENT

Dated: 060305

By: Barbara Dyke
Barbara Dyke

APPROVED AND SO ORDERED: VERMONT BOARD OF NURSING

Dated: July 11, 2005

By: Lester Farrell
Chairperson

Date of Entry: 7/12/05

nu.dyke.stip

STATE OF VERMONT



Prosecuting Attorney
Office of
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9 Baldwin Street
Montpelier, VT
05609-1107

IN RE: BARBARA DYKE, R.N.) **DOCKET No. NU38-1204**
License No. 026-0023378)

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Barbara Dyke, R.N.:

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.

2. Barbara Dyke (the "Respondent") of Claremont, New Hampshire is a registered nurse holding license number 026-0023378, issued by the State of Vermont. This license was originally issued on or about May 21, 1997, and is set to expire on March 31, 2005.
3. The Respondent's license has been suspended since February 14, 2005 pursuant to a Summary Suspension Order entered by the Board of Nursing. This discipline was based upon the facts below.
4. At all relevant times, the Respondent was practicing as a registered nurse and worked at the Cedar Hill Nursing Home (the "Facility") located in Windsor, Vermont. Respondent was terminated from employment at the Facility on November 30, 2004.
5. Prior to the summary suspension hearing, the Respondent was on a Stipulation and Consent Order dated November 7, 2001 that required the Respondent to abstain completely from the consumption of any drugs and alcohol. Attached.
6. On or about October 2, 2004, the Respondent had a seizure at the Facility. On December 22, 2004, the Respondent admitted to Investigator Steve Kennedy that she had been consuming alcohol the night before the seizure and that she had started drinking alcohol again in the summer of 2004.
7. On or about September 25, 2004, the Respondent made a transcription error involving morphine sulfate by not transcribing the order to the Medication Administration Record. The Respondent did not properly waste the residual morphine.

**Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602**

Charges

8. The above facts and circumstances, alone or in combination, violate: 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); 3 V.S.A. § 129a(a)(4)(failing to comply with an order to of the board or violating any term or condition of a license restricted by the board). 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is habitually intemperate); 26 V.S.A. § 1582(a)(6)(has a mental, emotional or physical disability, the nature of which interferes with ability to practice nursing competently); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care).

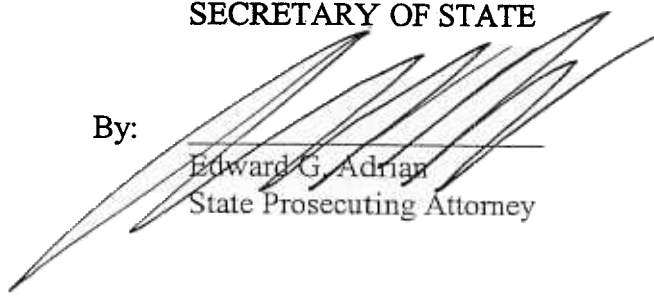
Request for Relief

WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 24th day of March, 2005.

STATE OF VERMONT
SECRETARY OF STATE

By:


Edward G. Adrian
State Prosecuting Attorney

nu.dyke.soc

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Prosecuting Attorney
Office of
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Montpelier, VT 05602

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

IN RE:)
BARBARA DYKE)
License No. 026-0023378)

Docket No: NU42-0101

STIPULATION FOR CONDITIONAL REINSTATEMENT

NOW COME the State of Vermont, through its Attorney General William H. Sorrell, and Respondent Barbara Dyke, and stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses and nursing assistants and to approve agreements entered into by the parties pursuant to 3 V.S.A. §§129, 129a and 814; 26 V.S.A. §§1574, 1582, 1595 and 1598; the Board of Nursing's Rules and the Office of Professional Regulation's Rules.

Facts

2. The Respondent (whose address is listed in the database of the Office of Professional Regulation as P.O. Box 59, Dame Hill Road, Orford, New Hampshire 03777) is a Registered Nurse under License Number 026 – 0023378.
3. By way of history, Respondent's license was previously sanctioned pursuant to a Specification of Charges, Stipulation and Consent Order entered on or about April 12, 2001 (attached and incorporated) regarding Respondent's diverting of drugs and addiction to drugs.

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Montpelier, VT
05609

Understandings

4. Respondent admits the conclusions of unprofessional conduct as set forth below in the Board's Order.
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 has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
7. Respondent waives any notification period and agrees to have this document reviewed by the Board during the next available meeting. 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.
8. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
9. Respondent voluntarily enters 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 her right to charges and a contested hearing before the Board of Nursing.
11. Respondent agrees that the Board may set forth the order below.

ORDER

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

A. By engaging in the conduct above, Respondent acted unprofessionally pursuant to, and in violation of Nursing Board Rules: Chapter 4, Rule IV, B.4.d (diverting supplies, equipment, or drugs for personal use or other unauthorized use) and Chapter 4, Rule IV, B.4.c (falsifying or altering clinical records or making inaccurate or misleading entries), which constitutes unprofessional conduct within the meaning of, and also further violates: 26 VSA §1582(a)(7) (engages in conduct of a character likely to deceive, defraud or harm the public) and 3 VSA § 129a(a)(3) (failing to comply with the provisions of federal or state statutes or rules governing the practice of the profession).

B. The Nursing Board, taking into consideration and incorporating the prior stipulation, and cognizant that Respondent's license has been **SUSPENDED** since about April 12, 2001, hereby reinstates Respondent's license, commencing on the date of entry, and **CONDITIONS** the Respondent's license to practice for **THIRTY-SIX (36) MONTHS**. The **CONDITIONS** on Respondent's licenses are as follows:

(1) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed **thirty six (36) months** of supervised nursing practice in which she works at least **forty (40) hours every two (2) weeks** in nursing [Part time hours of less than **forty (40) hours every two (2) weeks** shall be credited on a prorated basis].

(2) Administration of Medications.

For the first three (3) months of work as per paragraph B(1), Respondent is not permitted to administer any medications. Thereafter, the next three (3) months of work as per paragraph B(1), Respondent shall administer only non-controlled medications, and only under direct supervision. Thereafter, for the next three (3) months of work as per paragraph B(1), Respondent shall administer controlled medications under direct supervision only. Thereafter, (that is, after nine months of work as per paragraph (B)1 above), Respondent shall administer medications under "supervision" as that term is defined by paragraph (B)16 herein.

Any or all medication prohibitions may be reinstated, pursuant to a complaint, employer report and/or charges filed against Respondent during the term of this Consent Order, at the sole discretion of the Board (or its designee).

(3) Completion of Counseling and Treatment Plan.

Respondent shall enter into and/or continue counseling with a treating professional approved by the Board's designee until the treating professional notifies the Board's designee in writing that such counseling is no longer necessary in her/his professional opinion and the Board (or its designee) agrees, in writing.

Respondent shall comply with a treatment plan approved by the professional and the Board (or its designee). This shall be done as soon as possible, and in any event, no later than 30 days after entry.

(4) Approval of Changes of Treating Professional.

Respondent shall obtain prior approval from the Board or its designee of all changes of treating professional. Failure to obtain prior approval of a

change of treating professional may be grounds for a charge of malpractice.

Consent Order

Substance to

Treating Professional

Respondent shall provide a copy of this Stipulation and

Order to her treating professional and cause the professional to inform the

written professional of receipt of the Stipulation

treating professional's ability to comply with the conditions related to treatment and with all other

(6) Reports

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the entire period of this Consent Order. All reports shall be submitted to the Board.

Board. A preliminary report shall accompany the treatment report thereafter is due during the treatment period.

Consent report every thereafter

Respondent shall authorize her treating professional to provide

information requested by the Nursing Board, or its designee, whether oral or written.

during the period this Consent Order is in effect.

Random Drug Testing

Respondent shall submit to random drug screening at the request of

Board, Respondent's contact

Board, shall administer random drug and alcohol tests. All results shall be negative.

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except for drugs prescribed for her under the care of a physician, dentist, or nurse practitioner. (See paragraph B(9) Drug Use Exception).

(B) Abstain from Alcohol and Drug Use.

Respondent shall abstain completely from the consumption or the use or possession of any drugs or alcohol with the exception of prescribed medications as outlined in paragraph B(9).

(9) Drug Use Exception.

Respondent may take medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's chemical dependency within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription. The Board or its designee may request at any time that the practitioner document the continued need for prescribed medications. It is not anticipated that Respondent would be prescribed scheduled medication, during the term of this Consent Order, for a period greater than 14 days, but if so, then the prior suspension may be reinstated at the sole discretion of the Board (or its designee). Respondent shall keep a written

record of medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(10) Interview with the Board or its designee.

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

(11) Re-issue of License.

Within five (5) days of the date of entry of this Consent Order, Respondent shall submit her license to the Board of Nursing for a re-issued license labeled "conditioned".

(12) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first notify the Board before beginning such practice. If Respondent fails to notify the Board before, none of the time spent in out-of-state practice will be credited toward the fulfillment of the terms and conditions of this Consent Order.

(13) 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 her current place of nursing employment (if she is employed as a nurse), personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number.

(14) 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 she practices as a nurse and inform them of her conditional license status. Within ten (10) days of the date of entry of this Consent Order or of any such subsequent employment, Respondent shall cause her 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, 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 the conditions in the Consent Order during clinical experience.

(15) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Consent Order and every month thereafter, Respondent shall cause every employer for which she has been employed as a nurse during that month to submit to the Board an evaluation of Respondent's performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. In the event the Respondent attends nursing school, 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.

Reports must indicate, to the satisfaction of the Board, that Respondent can safely and competently administer medications.

Respondent shall authorize her employer and her nursing school administrator to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Consent Order is in effect.

(16) Practice Under Supervision.

Respondent shall practice only in a setting where she has on-site supervision for the entire shift by a registered nurse in good standing with the Vermont Board of Nursing, or is in good standing in all states that nurse is licensed.

(17) Prohibited Duties.

Respondent shall not work as a Charge Nurse.

(18) Types of Employment Prohibited.

Respondent shall not work for a nurse registry, travelling nurse agency, float-pool, home health care agency, temporary employment agency or as a personal care provider during the effective period of this Consent Order.

(19) Prohibited Hours of Work.

Respondent shall work only the day or evening shift during the effective period of this Consent Order. Respondent shall not work the night shift during the effective period of this Consent Order.

(20) License Renewal.

In the event Respondent's license is scheduled to expire during the period this Consent Order is in effect, Respondent shall apply for renewal of the

license, pay the applicable fee, and otherwise maintain qualifications to practice nursing in the State of Vermont.

(21) Release of Information Forms.

Upon the establishment of all practitioner/patient relationships with (1) treating professionals for substance abuse treatment, and with (2) treating professionals who prescribe any medication to Respondent, Respondent shall execute all release of information forms which are necessary to authorize those practitioners to release information described in this Consent Order to the Board of Nursing, its investigators, and the Attorney General's Office. All information disclosed to the Board shall be made available to its investigators and the Attorney General's Office. Respondent shall specifically execute a consent to disclosure form which meets the requirements of 42 C.F.R. §2.31 to permit disclosure of all information regarding respondent's substance abuse treatment to the Nursing Board, its investigators, and the Attorney General's Office. Any revocation by Respondent of such a consent to disclosure during the term of this Consent Order shall be considered a violation of this Consent Order.

(22) Costs.

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

(23) Violation of the Consent Order.

If Respondent violates the terms of this Consent Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If

a complaint or charges are filed against Respondent during the term of this Consent Order, the conditional license period shall be extended until the matter is final.

(24) Reevaluation of Conditions.

In the event Respondent does not work in nursing within twenty-four (24) months of the date of entry of this Consent Order, Respondent may appear before the Board for reevaluation of the conditions of this Consent Order.

(25) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on her license and after formal review by the Board, Respondent's nursing license may be fully restored by appropriate Board action. Furthermore, Respondent must demonstrate, to the Board's satisfaction, that she can safely return to unrestricted practice; that she has safely and competently administered medications and that she has fully complied with all the terms of this Consent Order.

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:

STATE OF VERMONT

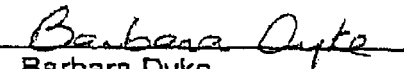
WILLIAM H. SORRELL
ATTORNEY GENERAL

Dated: 11/02/01

by: 
George C. Haegle IV
Assistant Attorney General

RESPONDENT
BARBARA DYKE

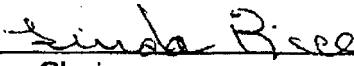
Dated: 110201

by: 
Barbara Dyke

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 11-5-01

by: 
Chairperson

Date of entry: 11/7/01

Office of the
ATTORNEY
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19 State Street
Montpelier, VT
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