

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

IN RE:)
DARLENE C. FOUNTAIN) Docket No. 2012-476
License No. 026.0028515)

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Darlene C. Fountain, 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. Darlene C. Fountain (the "Respondent") of Milan, New Hampshire is licensed by the State of Vermont as a Registered Nurse under license number 026.0028515. This license was originally issued on or about July 25, 2002 and expires on or about March 31, 2013.
3. At all times relevant, Respondent was employed as a Registered Nurse at Northeastern Vermont Regional Hospital (the "Facility"), located in Saint Johnsbury, Vermont.
4. On or about July 7, 2012 Respondent accessed the Emergency Department records of Patient 1, including Clinical Data, Admission Demographics, Medical Record Reports and Department Reports Summary. Respondent does not work in Emergency Department, did not provide treatment to patient 1, and had no professional reason for accessing the records. Additionally on or about July 22, 2012 Respondent accessed the Emergency Department Records of her daughter without a work related reason. The investigation of this HIPAA violation began when the Facility received a complaint from the mother of patient 1. Further investigation revealed that Respondent's daughter participated in an assault on Patient 1 requiring Patient 1's admittance to the Emergency Department.

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05620-3602

5. Respondent denies accessing the records of Patient 1 and admits to accessing her daughter's records at her daughter's request.

Violations

6. 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. § 1582 (a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);
 - b. 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, including without limitation the American Nurses Association Code of Ethics for Nurses §§ 3.1 "Privacy" and 3.2 "Confidentiality"); and
 - c. 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) including without limitation:
 - i. 45 CFR § 164.502(a)(A covered entity may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.);
 - ii. 45 CFR § 164.502(b)(A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.); and
 - iii. 45 CFR § 164.508(a)(1)(Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.)

Understandings

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

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8. 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.
9. 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.
10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
11. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
12. 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.
13. 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.
14. 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** the Respondent's license.
- B. Respondent's license is **CONDITIONED** as follows:
 - a. Respondent shall, within ninety days of this Order, at her own expense, complete a course pre-approved by the Board in Patient Confidentiality. Failure to complete such a course within the prescribed timeframe shall constitute a violation of this Order.
 - b. Upon receipt of satisfactory evidence that Respondent has completed the described course, the Board or its designee shall terminate the conditions upon Respondent's license and restore the license to unencumbered status.
- 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).

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- 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: 4/8/13

By: S. Lauren Hibbert

S. Lauren Hibbert
State Prosecuting Attorney

DARLENE C. FOUNTAIN
RESPONDENT

Dated: 4/11/13

By: Darlene C. Fountain

Darlene C. Fountain

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 4/8/13

By: Jeanine Carr

Jeanine Carr
Chairperson

Date of Entry: 4/8/13

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