

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

IN RE:
BARBARA ANN FOX, R.N.
License No. 026-0020346

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Docket No: NU73-0403

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, through the Secretary of State, and Respondent Barbara Ann Fox, R.N. who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ["the Board"] has authority to investigate and adjudicate complaints of unprofessional conduct pursuant to 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a).

Facts

2. The Respondent (whose address is listed in the database of the Office of Professional Regulation as PO Box 241, Whitehorse Beach, MA 02321) is a Registered Nurse under License Number 026-0020346.
3. Respondent was originally licensed on January 15, 1992 and Respondent's license is currently expired.
4. Respondent was convicted in the United States District Court for the Eastern District of Virginia, Richmond Division, Case No. 303CR54 of two counts of making a false statement relating to health care matters, in violation of Title 18, U.S.C. §1035 and one count of acquisition of controlled substances by fraud, in violation of Title 21 U.S.C. §843(a)(3).
5. In accordance with said conviction, Respondent entered into a plea agreement with the United States Government in which she agreed to voluntarily surrender any professional licenses or certifications and further agreed not to seek reinstatement (see Attachment A).
6. On or about April 22, 2003, Respondent, through her attorney, returned her nursing license to the Vermont State Board of Nursing.

Charges

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 3 V.S.A. §129a(a)(3).
8. Whether or not committed in this state, being convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(2).

Understandings

- A. The Respondent understands that the Board of Nursing must review and accept the terms of the Order set forth below and that if the Board rejects all or any portion of the Order, then this entire document shall be null and void.
- B. The Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- C. The Respondent is not under the influence of any drugs or alcohol at the time this document is being signed.
- D. The Respondent agrees that she has had sufficient opportunity to consult with legal counsel before signing this document.
- E. The Respondent is voluntarily waiving her right to a contested hearing before the Board of Nursing.
- F. The Respondent agrees that the Order set forth immediately below may be entered by the Board of Nursing.

Consent Order

- G. Based on the above stipulations, it is **ADJUDGED** as follows:
 - (1) The "Facts" listed above are true; and
 - (2) The Respondent has engaged in unprofessional conduct in that the Respondent:
 - (a) has failed to comply with provisions of federal or state statutes or rules governing the practice of the profession in violation of 3 V.S.A. §129a(a)(3); and
 - (b) was convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing in violation of 26 V.S.A. §1582(a)(2).

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

H. Based on the above stipulation and on the above findings and conclusions of this Board, it is **ORDERED** that:

The Board hereby **REVOKES** Respondent's license to practice nursing.

I. 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).

J. This Stipulation and Consent Order will remain part of the Respondent's licensing file and may be used in determining sanctions in future disciplinary matters.

AGREED TO:

BY: BARBARA ANN FOX
RESPONDENT

Date: 10/8/03

Barbara Ann Fox
Barbara Ann Fox

AND BY: STATE OF VERMONT

SECRETARY OF STATE

Date: 10/20/03

Edward Adrian
State Prosecuting Attorney

ACCEPTED AND SO ORDERED:

BOARD OF NURSING

Date: Nov. 10, 2003

Susan O. Farrell
Chairperson

Dated entered: 11/17/03

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

IN THE UNITED STATES DISTRICT COURT OF THE
EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA

v.

BARBARA A. FOX,

Defendant.

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) CRIMINAL NO. 3:03CR_____
)
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)

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, S. David Schiller, Assistant United States Attorney, the defendant, BARBARA A. FOX, and the defendant's counsel, David E. Boone, Esquire, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, BARBARA A. FOX, agrees to waive indictment and plead guilty to a three count criminal information filed with this agreement.

a. Counts One and Two charge the defendant with making a false statement relating to health care matters, in violation of Title 18, United States Code, Section 1035. The maximum penalty for each offense is a term of five (5) years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three (3) years of supervised release.

b. Count Three charges the defendant with acquisition of controlled substances by fraud, in violation of Title 21, United States Code, Section 843(a)(3). The maximum penalty for this offense is a term of four (4) years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and one (1) year of supervised release.

c. The defendant is aware that these supervised release terms are in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

d. The defendant waives any objection or claim based on the doctrines of multiplicitous or duplicitous charging to the Criminal Information format and structure.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Restitution does not appear to be applicable in this case.

4. The defendant will disclose to the United States in which states and/or localities she holds any professional licenses or certifications. The defendant agrees to voluntarily surrender such licenses and certifications, and further agrees not to seek reinstatement. In addition, the defendant agrees she will not apply for a professional, healthcare related, license in any jurisdiction.

5. The defendant agrees to voluntarily surrender any Medicare or other healthcare program provider numbers issued to her, and not to seek reinstatement in Medicare or any other healthcare program, or reapply for a provider number.

6. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not

binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

7. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the criminal information or statement of facts. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in the criminal information or statement of facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

8. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance.

9. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

10. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no

truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

11. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

12. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

13. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

14. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

15. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11 of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

16. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

17. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any

records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

18. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

19. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date

BARBARA A. FOX
Defendant

20. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the



defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date

David E. Boone, Esquire
Counsel for Defendant

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By: _____

S. David Schiller
Assistant United States Attorney