

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

IN RE:)
PETER HAYS) Docket No: NU35-1198
License No. 026-0023068

STIPULATION AND CONSENT ORDER FOR REINSTATEMENT

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Peter Hays, R.N., 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, 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)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); the Administrative Rules of the Board of Nursing; and the Rules of the Office of Professional Regulation.

Facts

2. The Respondent, Peter Hays, is licensed in the State of Vermont as a registered nurse under license number 026-0023068. The Respondent's license was originally issued on August 22, 1996.

3. The Respondent's license was indefinitely suspended on March 7, 2001 pursuant to an Order entered by the Board. See Attachment A. This discipline was imposed due to a number of practice errors while employed at Fletcher Allen Health Care ("FAHC") and Gifford Hospital. Id.

4. Respondent has a history of spinal problems and chronic neck pain. At the time Respondent's license was suspended, he was taking methadone to manage his pain. Currently, Respondent continues to use methadone to alleviate his pain.

5. The Findings of Fact included in the Board Order indicate that Respondent needs to demonstrate that he is safe to return to nursing practices and require that Respondent have a thorough psychological evaluation prior to petitioning the Board for reinstatement. Id.

6. In March 2005, an Independent Psychiatric Evaluation was submitted on behalf of the Respondent by Jonathan Weker, M.D. In his report, Dr. Weker concluded that

STATE OF VERMONT



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Respondent's "ability to function reliably and productively as a nurse requires ongoing maintenance of his physical and mental health regimens." Dr. Weker recommended that 1) Respondent continue in psychiatric treatment to monitor his medication regimen, 2) Respondent continue in psychotherapy, and 3) Respondent consult with a pain management specialist regarding his methadone regimen.

7. On or about August 8, 2005, William Megdal, M.D. from FAHC, Pain Management Division, evaluated Respondent. In his report, Dr. Megdal concluded that Respondent "is on an appropriate level of methadone" and that he had "no reason to believe that this would preclude him from being able to work or function as a registered nurse."

Charges

8. The above acts, omissions and/or circumstances described above, constitute grounds for unprofessional conduct because Respondent violated:

- i. 26 V.S.A. §1582(a)(3) (Inability to practice nursing competently by reason of any cause), which includes, but is not limited to, performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(1) and (2); and
- ii. 26 V.S.A. §1582(a)(3) (Engages in conduct of a character likely to harm the public).

Understandings

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

10. 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.

11. 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.

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

13. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

14. 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

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Consent Order.

15. Respondent voluntarily waives his right to charges and a contested hearing before the Board of Nursing.

16. 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. Before being reinstated the Respondent must:

- i. Successfully complete a nursing re-entry program and present evidence of such successful completion to the Board, **and**
- ii. Present the Board with a treatment plan, designed with the help of his primary care physician, demonstrating his decreased dependence on methadone for pain management. The Board must accept this treatment plan.

If Respondent fulfills the two (2) requirements detailed above, then his license will be **CONDITIONED FOR A PERIOD OF THREE YEARS** as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes **three (3) years** of supervised nursing practice in which he works 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. Respondent shall be prohibited from working more than forty (40) hours per week. Respondent's license is additionally conditioned as follows.

(3) Continuing Treatment with Primary Care Physician

Respondent shall enter into and/or continue treatment with a primary care physician approved by the Board to ensure the ongoing monitoring of Respondent's physical health and the efficacy of his present pain management regimen. Respondent shall enter into and comply with the methadone treatment plan approved by the Board and the treating professional as outlined in paragraph A.(ii).

(4) Completion of Mental Health Counseling and Treatment Plan.

Respondent shall enter into and continue mental health counseling with a treating professional approved by the Board until the treating professional shall certify in

STATE OF VERMONT



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writing to the Nursing Board that such counseling is no longer necessary. Respondent shall enter into and comply with the mental health treatment plan approved by the Board and the treating professional.

(5) Notification to Treating Professionals.

Respondent shall provide a copy of this Stipulation and Consent Order to his treating professionals and cause his treating professionals to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professionals' ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(6) Reports from Treating Professionals.

Respondent shall authorize and cause his treating professionals to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report from the Respondent's mental health counselor is due commencing the month after the date of the commencement of the conditions and subsequent reports are due every month thereafter. The Respondent shall cause his primary care physician to send a report to the Board only after an appointment, but no more than once a month.

Respondent shall authorize his treating professionals to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(7) 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 during the conditioned period 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 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 which has a clinical portion which involves actual patient care, he 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 its conditions during clinical experience.

(8) Reports from Employers.

Within one (1) month of the date of the commencement of the conditions 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 relevant time period to submit to the Board an evaluation of Respondent's



work performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Consent Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.

(9) Practice Under Supervision.

Respondent shall practice only in a nursing setting where Respondent has direct supervision for the entire shift, including medication administration, by a Registered Nurse that is licensed and in good standing with the Board.

(10) Random Drug and Alcohol Testing.

Respondent shall submit to random drug screenings at the request of the Board or its designee. Respondent shall designate a person, who has been approved by the Board or its designee, to administer random drug screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(11) Abstain from Drug Use.

Respondent shall abstain completely from the consumption or possession of drugs with the exception of methadone as addressed by the Respondent's treatment plan and prescribed medications as outlined in paragraph A.(12) for the period of time described in paragraph A.(2).

(12) Drug Use Exception.

Other than methadone as addressed in the Respondent's treatment plan, Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled 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 substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled 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 necessity for the prescribed scheduled/controlled medications if the term exceeds 14 days. This includes medications to be administered as necessary. Excluding methadone as addressed by the Respondent's treatment plan, it is not anticipated that Respondent would be prescribed scheduled/controlled medication, during the term of this Consent Order, for a period greater than 14 days, but if so, then the conditions herein may be revoked by the Board.

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Respondent shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(13) Interview with the Board or its Designee.

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

(14) Types of Employment Prohibited.

~~The parties have not reached agreement on this condition and are free to argue for what they feel is appropriate before the Board at a disposition hearing. The State makes the following recommendation:~~

Respondent shall not work as a supervising nurse. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency ~~or as a personal care provider in a home setting~~ during the effective period of this Consent Order. (X)

(15) 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 obtain approval from the Board prior to Respondent leaving the State of Vermont. If Respondent fails to receive such approval before leaving the State, none of the time spent 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 practice so long as the Respondent can still comply with the provisions of this Consent Order.

(16) 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 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, personal address, or telephone number.

(17) 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 nursing, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that he has otherwise complied with the requirements for license renewal.

(18) Costs.

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

(19) 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

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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.

(20) 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. The Respondent must present proof that he has full complied with the terms of this Order. The Respondent must also present proof to the satisfaction of the Nursing Board, that he poses no danger to the public or the practice of nursing and that he can safely and competently perform the duties of a Registered Nurse.

B. Notwithstanding any provision above, the 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.

AGREED TO:

Dated: 5/25/06

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Edward G. Adrian
State Prosecuting Attorney

Dated: 5/18/06

PETER HAYS
RESPONDENT

By: [Signature]
Peter Hays

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 6/12/06

By: [Signature]
acting Chairperson

Date of Entry: 6/14/06

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**STATE OF VERMONT
BOARD OF NURSING**

IN RE:	)	
Peter Hays	)	Case File Nos. NU35-1198
License No. 26-23068	)	NU050700

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, February 12, 2001, at 133 State Street in Montpelier, Vermont. Board members Linda Rice, Louise Hamilton, Larry Kingsbury, Susan Cota, Raymond Phillips, Elayne Clift and Diane Dowgiewicz participated in the decision. George Haegele, Assistant Attorney General, appeared for the State. Peter Hays ("the Respondent") was present and was represented by Attorney Leslie Pratt. Chris Winters was the Presiding Officer.

It should be noted that after hearing the testimony of the witnesses, Board Member Louise Lamphere, who works at Fletcher Allen, recognized some of the names and places mentioned in the evidence and felt it would be better if she recused herself to avoid any appearance of impropriety. She did not participate in the deliberative session.

It should also be noted at the outset that the Respondent, in his Answer to the Specification of Charges, admitted every charge, subject to mitigating circumstances for his admissions to paragraphs 10 and 13.

Findings of Fact

1. Peter Hays is a registered nurse who holds license number 26-23068 issued by the State of Vermont.
2. Respondent, at all times relevant, was employed by Fletcher Allen Health Care (FAHC) of Burlington, Vermont or Gifford Medical Center of Randolph, Vermont.
3. On or about November 4, 1998, while employed at FAHC, the Respondent transfused a unit of blood to a patient without a physician's order.
4. The Respondent had received the two units of blood as the result of the lab's paperwork error in the ordering of the blood.

5. The secretaries were angry with the Respondent and just wanted him to take the blood and give it to the patient.
6. On or about November 4, 1998, while employed at FAHC, the Respondent failed to document the transfusion or the amount transfused.
7. On or about November 16, 1998, while employed at FAHC, the Respondent administered morphine to a patient without a physician's order.
8. The Respondent mistook the pre-operative sheet for a post-operative sheet in administering the morphine. There never was a post-operative physician's order for morphine.
9. The Respondent was employed by Gifford Medical Center from about May 5, 1999 to the end of June, 2000.
10. On April 25, 2000, the State filed a Specification of Charges against the Respondent alleging unprofessional conduct for the acts described in paragraphs 3, 6 and 7, above.
11. The Respondent informed his employer of the Charges in May 2000 and was put on a four week probationary period.
12. While on probation, the following errors by the Respondent were documented at Gifford Medical Center in May and June of 2000.
13. The Respondent failed to administer eye drops as required.
14. The Respondent allowed a medicated patient to leave the facility without proper transportation. The patient was not to be allowed to drive. The patient had a truck nearby and drove home.
15. The Respondent pulled the tape on a heparin lock and administered eye drops to a patient without first changing gloves.
16. The Respondent left narcotics unlocked and unsecured
17. The Respondent documented that eye drops were administered when they were not.
18. The Respondent failed to document that post-operative medications were given.
19. The Respondent administered pills with his bare hands at the patient's request.

20. The Respondent Removed IV tape without gloves and would have removed the IV without gloves if not stopped by another nurse.
21. The Respondent failed to care for a patient with a blood sugar problem by going on to another patient without calling a physician and/or another nurse.
22. The Respondent offers no excuse for some of the above of these errors, but does assert that he was often very busy, rushed, and feeling the effects of a great deal of pressure.
23. The Respondent has a history of spinal problems and chronic neck pain. He is currently taking methadone to manage this pain.
24. The Respondent asserts that neither the pain nor the medications have affected his performance at work or contributed to the errors he has made.
25. The Respondent has been diagnosed with Hepatitis C and informed his employer at the time (Gifford) of his condition. While working at Gifford, the Respondent was taking Interferon for his condition. This led to some fatigue, although he does not offer this as an excuse for the above errors.
26. Respondent admits, in hindsight, that he should have taken a leave of absence from Gifford while taking the Interferon.

Conclusions of Law

- A. The Board of Nursing may revoke, suspend, discipline or otherwise condition the license of a nurse who engages in unprofessional conduct as defined by 26 V.S.A. §1582.
- B. Respondent, by engaging in the conduct described above, has exhibited an inability to practice nursing competently by reason of any cause pursuant to 26 V.S.A. §1582(a)(3). Such conduct constitutes unacceptable patient care and a failure to conform to the essential standards of acceptable and prevailing nursing practice in violation of Board Administrative Rule (IV)(B)(2)(a) and (b).
- C. Respondent, by engaging in the conduct described above, has also engaged in conduct likely to harm the public in violation of 26 V.S.A. §1582(a)(7).

Opinion

The Board appreciates Mr. Hays' openness and willingness to take responsibility for his actions. However, the Board finds the Respondent is currently unsafe to practice without supervision to ensure that he can practice without committing errors. But this Board cannot in good conscience return the Respondent to a supervised setting in which he has clearly

demonstrated issues with anxiety and stress when he is "under the microscope"

The Respondent offered several mitigating circumstances for the Board to consider in making its decision, but many of these circumstances demonstrate the Respondent's lack of assertiveness and personal responsibility (at the time) in allowing others to coerce him into actions he must be held accountable for as a licensed professional in this state.

The Respondent has asked that the Board be "creative" and allow him to work under conditions in a less stressful situation. Unfortunately, such a situation does not exist to the best of the Board's knowledge. The inherent nature of the profession is stressful because, as a nurse, you are constantly responsible for the lives of others and you are always going to be busy and probably overworked, as well. The Board cannot conceive of a stress-free nursing environment and needs more insight as to the Respondent's stress and anxiety problems in order to make an informed decision about his return to nursing.

Mr. Hays is obviously a caring individual who takes his chosen profession very seriously. This Board would like to applaud his efforts in his career to date and would encourage him to strive to return to the practice of nursing under the right circumstances.

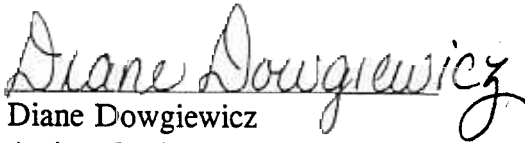
Order

In light of the above findings and conclusions, the Board hereby SUSPENDS the Respondent's license, effective as of the date of entry of this Order, below.

The suspension shall continue until such time as the Respondent can demonstrate to the Board that he is safe to return to the practice of the profession. Such proof shall include a thorough psychological evaluation by a Psychiatrist and it is recommended that the Respondent obtain assertiveness training prior to petitioning the Board for reinstatement.

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By: 
Diane Dowgiewicz
Acting Chair

Date: 2-23-01

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 3-7-01