

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

IN RE:)
KELLY J. HEMINGER)
License Tracking No. 025.0091576)

Docket No. 2012-731

STIPULATION AND CONSENT ORDER

Stipulation

NOW COME the State of Vermont, by and through State Prosecuting Attorney Gabriel M. Gilman, and the Respondent Kelly Heminger, 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.

Stipulated Facts

2. Kelly J. Heminger ("Respondent") of South Royalton, Vermont is licensed by the State of New Hampshire as a Licensed Practical Nurse. On November 20, 2012, the Vermont Board of Nursing received from Respondent a Licensed Practical Nurse Application by Endorsement.
3. Respondent disclosed that her New Hampshire license has been disciplined pursuant to a Settlement Agreement with the New Hampshire Board of Nursing, entered May 21, 2010, in that Board's case numbered 014450-22 (hereinafter, "New Hampshire Settlement Agreement"). A copy of the New Hampshire Settlement Agreement is attached hereto as Exhibit A.

Basis for Reciprocal Discipline

4. The conduct for which Respondent was disciplined in New Hampshire would constitute unprofessional conduct in this state and is properly the subject of Board discipline pursuant to:

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Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

- a. 3 V.S.A. § 129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - b. 3 V.S.A. §129(a)(5) (The Board may discipline any licensee or refuse to license any person who has had a license application denied or license revoked, suspended, limited, conditioned or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct).
5. Consistent and commensurate application of licensing conditions between and among jurisdictions tends to promote professional accountability and is in the interest of the public

Understandings

6. Respondent admits that the facts above are true and that the conditions below are appropriate to protect the public.
7. 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.
8. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement prejudice her right to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
9. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
10. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
11. 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.
12. 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.
13. Respondent agrees that the Order set forth below may be entered by the Board.

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ORDER

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

- A. At such time as Respondent is otherwise qualified for licensure, Respondent's application for licensure shall be **GRANTED**, and the license shall be **CONDITIONED** on terms substantially identical to those imposed by Order of the New Hampshire Board of Nursing. In particular:
1. Respondent shall comply with the terms of probation specified by the New Hampshire Settlement Agreement as though those terms were imposed directly by this Board. Respondent shall notify this Board within forty-eight hours of any adverse action relative to her license status in New Hampshire.
 2. While working in Vermont under her Vermont license, Respondent is specifically excused from compliance with probation term G (at p. 5) of the Settlement Agreement; however, Respondent is reminded to consult the New Hampshire Board to ensure that exceeding the limits of term G in Vermont would not be regarded by the New Hampshire Board as a violation of the Settlement Agreement. This Board has no authority to interpret or modify the New Hampshire Settlement Agreement on behalf of New Hampshire authorities.
 3. After the date of entry of this Order, Respondent shall carbon-copy to the Vermont Board of Nursing all notices, reports, evaluations, and other submissions she may make to the New Hampshire Board of Nursing pursuant to the New Hampshire Settlement Agreement.
 4. Respondent shall, upon request of Board staff, authorize the New Hampshire Board of Nursing to share any and all records relating to Respondent.
 5. Respondent may petition to terminate the above conditions by demonstrating to the Board's satisfaction either that:
 - a. the New Hampshire Board of Nursing has terminated Respondent's probation and restored her unencumbered New Hampshire license, or
 - b. Respondent has met reinstatement requirements substantially equivalent to those set out in the New Hampshire Order.
- B. 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).
- C. 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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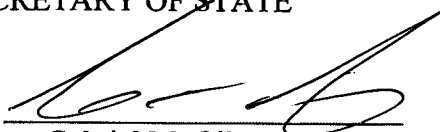


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AGREED TO:

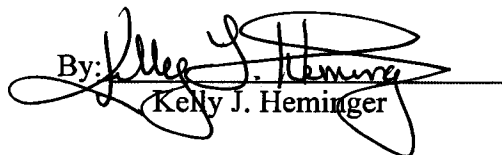
Dated: 4/8/12

STATE OF VERMONT
SECRETARY OF STATE

By: 
Gabriel M. Gilman
State Prosecuting Attorney

KELLY J. HEMINGER
RESPONDENT

Dated: 04-02-2013

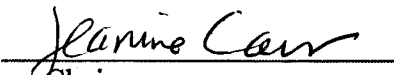
By: 
Kelly J. Heminger

APPROVED AND SO ORDERED:

Dated: 4/8/13

Date of Entry: 4/8/13

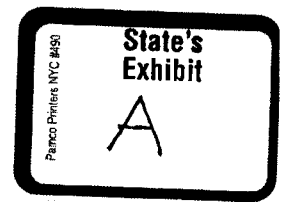
VERMONT BOARD OF NURSING

By: 
Chairperson

STATE OF VERMONT



Prosecuting Attorney
Office of
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National Life Building
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05620-3602



**State of New Hampshire
Board of Nursing
Concord, New Hampshire 03301**

In the Matter of:
Kelly J. Heminger, LPN
No.: 014450-22
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of nursing, the New Hampshire Board of Nursing ("Board") and Kelly J. Heminger, LPN, ("Ms. Heminger" or "Respondent"), a licensed practical nurse licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 326-B:4; RSA 326-B:38, RSA 541-A and Board of Nursing Administrative Rule ("Nur") 207, 208, and 211, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by the Board's licensees. Pursuant to RSA 326-B:38, X, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice nursing in the State of New Hampshire on September 5, 2007. Respondent holds license number 014450-22. Respondent's current license will expire on July 1, 2011.
3. On or about May 1, 2009, the Board received a compliant from Merrimack County Nursing Home, 325 Daniel Webster Highway, Boscawen, NH 03303. The complaint

alleged that Kelly Heminger, LPN directed that a resident be placed in a Merry walker, a physical restraint, without a physician's order. The resident fell and sustained serious injury. Further, Respondent failed to document the use of the Merry walker in the resident's record and, along with LNAs under her supervision, discussed the decision not to document or report the use of the Merry walker.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's direction to place the resident in the Merry walker, her failure to record such use, and Respondent's discussion with LNAs under her supervision about not documenting or reporting the use of the Merry walker.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct, in violation of RSA 326-B:37, II (e), and/or (h)(1), and/or (k), and/or (m) and/or (q)(3), and/or Nur 402.04(b)(3) and/or (11), by the following facts:
 - A. On or about April 22, 2009, Respondent placed a resident in a Merry walker at approximately 5:30 PM. Respondent was aware that there was no physician's order for a Merry walker for the resident.
 - B. Despite her knowledge that there was no physician's order for the Merry walker, Respondent directed an LNA under her supervision to assist in placing the resident in the Merry walker.
 - C. Ordering a restraint for a resident is beyond Respondent's scope of practice as a licensed practical nurse.

- D. At approximately 7:00 PM the resident fell, sustained serious injury, and was later transported by EMTs to the hospital
 - E. After the resident fell, Respondent and an LNA, at Respondent's direction, removed the resident from the Merry walker. Respondent told the staff to remove the Merry walker to prevent others from learning that the resident had fallen while in the Merry walker.
 - F. On or about April 23, 2009, Respondent completed an incident report for the resident and failed to report that the resident had been in a Merry walker at the time of her fall.
 - G. The nurses' notes for the resident that Respondent completed also do not contain any mention that the resident was in a Merry walker at the time of her fall.
 - H. At least two LNAs who were witnesses to the incident reported that Respondent told the staff that no one was to mention that the resident had been in the Merry walker at the time of her fall.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 326-B:37, II (e), and/or (h)(1), and/or (k), and/or (m), and/or (q)(3) and/or Nur 402.04 (b)(3), and/or (11).
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a licensed practical nurse in the State of New Hampshire.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 326-B:37, III:

- A. Respondent's license to practice as a licensed practical nurse is **CONDITIONED** and subject to a period of **PROBATION** for one (1) year.
- B. Respondent is required to meaningfully participate in programs of continuing education in the areas of resident's rights and ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within six (6) months from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.
- C. Respondent is assessed an **ADMINISTRATIVE FINE** in the amount of \$500. Respondent shall pay this fine in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 21 South Fruit Street, Suite 16, Concord, New Hampshire **OR** in **TEN (10)** installments of \$50 each. The first payment shall be due within thirty (30) days of the effective date of this agreement. The remaining payments shall be due within thirty (30) days of the previous payment. All payments shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 21 South Fruit Street, Suite 16, Concord, New Hampshire.

- D. Respondent agrees not to exercise the multi-state licensure privileges under RSA 326-B:46 without the express written authorization of the Executive Director while the probation is in effect.
- E. Respondent is required to practice as a licensed practical nurse in a structured and supervised health care environment where other health care providers are employed and is prohibited from practicing as a licensed practical nurse in a home care environment or in a staffing agency while the probation is in effect.
- F. While the probation is in effect, Respondent shall provide a copy of this Settlement Agreement to all nurse licensing boards where she is currently licensed and schools of nursing where currently enrolled within 30 days of receipt of the copy executed by the Board. Respondent shall also provide a copy of the Agreement to all nurse licensing boards or schools of nursing for which the Respondent makes future application at the time of such application.
- G. Respondent, while the probation is in effect, shall not work more than 8 hours a day or 40 hours a week, shall not work after 11:30 PM, shall not rotate shifts, shall work on one unit per shift and shall not rotate to other units during a shift without the express written authorization of the Executive Director and upon recommendation of a nursing supervisor.
- H. Respondent is required to provide written notification to the New Hampshire Board of Nursing within 10 days of obtaining employment as a licensed practical nurse while the probation is in effect.

- I. Respondent is required to provide written notification to the New Hampshire Board of Nursing within 10 days of termination or change in role of any employment as a licensed practical nurse while the probation is in effect.
- J. Respondent is required to provide a copy of this *Settlement Agreement* to her nursing supervisor within 10 days of obtaining employment as a licensed practical nurse.
- K. Respondent is required, within one month of beginning employment while the probation is in effect, to provide a written report from her nursing supervisor to the New Hampshire Board of Nursing setting forth the following information:
 - 1. The name and address of the Respondent's employer;
 - 2. The duties and responsibilities to be performed by the Respondent;
 - 3. An acknowledgement by the nursing supervisor that he/she has read this *Settlement Agreement* and understands the role of the supervisor.
- L. Respondent is required, on a quarterly basis, to submit to the New Hampshire Board of Nursing work performance evaluations from the nursing supervisor. The evaluation is required to be on a form provided by the New Hampshire Board of Nursing and shall include the following information:
 - 1. Name and address of Respondent;
 - 2. Number and times of hours worked;
 - 3. Quality and safety of nursing care;

4. Adherence or failure to adhere to the conditions and restrictions set by the New Hampshire Board of Nursing.
- M. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 326-B:37 (q)(2), and a separate and sufficient basis for further disciplinary action by the Board.
- N. If Respondent wishes to petition for termination of the probation of her LPN license, Respondent shall, in a letter to the Board, petition the Board for such termination. Respondent shall demonstrate to the Board the ability to professionally perform nursing activities through evidence of adherence to standards of clinical practice and patients' rights, character references, personal testimony, and written exhibits which shall include but not be limited to :
1. A written evaluation by Respondent's supervisor that addresses Respondent's clinical practice skills and adherence to and respect for patients' rights;
 2. Three letters of reference that address Respondent's professionalism and work habits during the period of probation. If Respondent has been employed since the date of this Agreement, at least one of the references must be from an employer;
 3. A personal statement from Respondent that describes Respondent's experiences including specific examples of the behavioral changes that have been made.

- O. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
- P. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
- Q. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to her other than those terms and conditions expressly stated herein.
- R. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
- S. Respondent understands that her action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
- T. Respondent has had the opportunity to seek and obtain the advice of an attorney of her choosing in connection with her decision to enter into this agreement.

- U. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced her right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
- V. Respondent is not under the influence of any drugs or alcohol at the time she signs this *Settlement Agreement*.
- W. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, she waives these rights as they pertain to the misconduct described herein.
- X. This Agreement constitutes the entire agreement and understanding between the parties and supercedes all prior agreements and understandings.
- Y. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: May 12, 2010

Kelly J. Heminger, LPN
Kelly J. Heminger, LPN
Respondent

Date: 05/12/2010

[Signature]
Counsel for Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 5-21-10

[Signature]
(Signature)

Margaret O. Walker
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

/* Sharon Dyer, LPN, Board member, Recused.