STATE OF VERMONT
BOARD OF NURSING

IN RE:	)	
Neweve M. Johnson-Lively	)	Case File No. NU49-0299
a.k.a. Eve Johnson	)	
License no. 26-24212	)	

SANCTION HEARING AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, July 10, 2000, at 81 River Street in Montpelier, Vermont. Board Members Louise Hamilton, Susan Cota, Diane Dowgiewicz, Susan Farrell, Louise Lamphere, Larry Kingsbury, Linda Rice and Raymond Phillips participated in the decision. Michael McShane, Assistant Attorney General, appeared for the State. Respondent Eve Johnson was present and was represented by Attorney Mark Oettinger. Chris Winters was the Presiding Officer.

The parties stipulated to the facts of the case. A stipulation to that effect was filed with Board at the beginning of the hearing and was approved by the Board. That document is hereby incorporated by reference. The hearing was held on the issue of sanction only.

Conclusions of Law

A. The Respondent committed unprofessional conduct when she failed to follow the physician's orders for patient E.S. and failed to recheck a blood sugar reading under 60 or notify house staff, as specifically called for by the physician's order for this patient.

B. The Respondent committed unprofessional conduct when she failed to inform the Charge Nurse or the Respiratory Therapist physician of the low blood sugar reading.

C. The Respondent committed unprofessional conduct when she failed to recognize and appropriately assess the clinical changes in E.S.'s condition and to act upon them in a timely manner.

D. By engaging in the acts set forth in paragraphs A, B and C, the Respondent has,

for each paragraph, violated: 3 V.S.A. § 129a(a)(10) (In the course of practice, gross failure to exercise on a particular occasion that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent professional engaged in similar practice under the same or similar conditions), 26 V.S.A. § 1582(a)(7) (engaging in conduct of a character likely to harm the public), and 26 V.S.A. § 1582(a)(3) and Nursing Board Administrative Rule Chapter 4, IV(B)(2) (inability to practice nursing competently by reason of any cause, including the performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice).

E. The Board may discipline a licensee if, after notice and an opportunity for a hearing, the Board finds that the licensee has engaged in unprofessional conduct. 3 V.S.A. § 129(a)(5), 26 V.S.A. § 1582(a).

Opinion

The Respondent has admitted to a very serious mistake in her nursing practice. While it is not to be taken lightly, this mistake is mitigated to some extent because the Respondent admits her mistake and has taken steps to educate herself and prevent such a mistake from happening again. Additionally, over two years of practice have occurred since the incident without any other reports of errors. The Board has the impression that the Respondent has learned from her error and that, given her current working conditions, a suspension would not serve any purpose in protecting the public. Furthermore, the Board is convinced that her current work environment and the conditions ordered below allow for adequate supervision and protection of the public to further ensure such an error does not occur in the future.

Order

In light of the stipulated findings of fact and the Board's conclusions of law, as well as the evidence and argument presented at the sanction hearing, the Board hereby CONDITIONS Respondent's license to practice as a Registered Nurse in accordance with the conditions found in the proposed stipulation and consent order rejected by the Board at its April 10, 2000 meeting.

The Board hereby incorporates that document by reference and adopts the "Consent Order" portion of the document only, pages 4-6 only, excluding Paragraph A and the unnecessary signatures (page 7), and beginning with Paragraph B(2).

Appeal Rights

This is a final administrative determination by the Vermont State 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: Susan Farrell
Susan Farrell, R.N.
Chair

Date: July 17, 2000

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7-26-00

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

IN RE:)
NEWEVE M. JOHNSON-LIVELY) **Docket No: NU 49 - 0299**
License No. 026-0024212)

STIPULATION AS TO FACTS

Now come the Respondent Neweve M. Johnson, RN, and the State of Vermont, by its Attorney General, William H. Sorrell, and agree and stipulate that the following facts are true and may be admitted into evidence and considered by the Board.

Facts

1. The Respondent (whose address is listed in the database of the Office of Professional Regulation as 244 Church Street, Apt. 7, Burlington, VT) is licensed as a Registered Nurse under License Number 026 – 0024212.

2. Respondent's license was originally issued on August 11, 1998 and it currently expires on March 31, 2001.

3. In January, 1999, the Respondent was employed by Fletcher Allen Health Care.

4. In the early afternoon of January 31, 1999, the Respondent began work on McLure 5 and was assigned two patients, one of whom was ES; also, she was to be responsible for additional patients as they were admitted.

5. ES had been diagnosed and had received treatment for Non-Q wave MI, hypertension and congestive heart failure. More specifically, in December of 1999 ES had been admitted to Fletcher Allen Health Care for diverticulitis. She was readmitted on January 11, 1999 and had emergent surgery to repair a leaking pseuaneurism of her abdominal aortic aneurism. She recovered in the SICU and on mechanical ventilation and was successfully extubated on January 13, 1999. At that time she was noted to be in renal failure. On January 14, 1999 ES had the myocardial infraction. ES developed a line infection and the central line was withdrawn. ES' medical history includes, CVA, CABG, acute pulmonary edema, Type II DM, and a small bowel obstruction.

6. In addition to the above, ES had a history of diabetes and had a written order for an insulin sliding scale, for a daily dose of an oral anti-hyperglycemia agent, for finger sticks before each meal and at bedtime, and orders that if ES's blood sugar was

lower than 60, she was to receive ½ amp D50W and the house staff was to be notified.

7. On January 31 1999, at the beginning of her shift, the Respondent checked the physician's orders concerning ES.

8. At 1730 hours, the Respondent did a finger stick on ES and obtained a reading of 46. At the time it did not appear to Respondent that ES had any signs or symptoms of hypoglycemia. Additionally, ES had started to eat. Respondent did not administer the D50W or notify the house staff or follow-up with another finger stick.

9. At 2030 hours, the Respondent looked in on ES who stated that she was tired and would take a nap, at that time another finger stick was not done and D50W was not administered. Respondent did not consider the fact the ES was tired to be remarkable, because ES had not slept well the night before and had a number of visitors that day.

10. At 2130 hours, the Respondent found ES unresponsive and asked for assistance from the Charge Nurse, Susan Stoner, RN, but did not tell Stoner anything about the earlier low blood sugar reading.

11. The Respondent or RN Stoner called Respiratory Therapy to intubate ES, but when a physician(s) arrived, the Respondent did not advise her (them) of the earlier blood sugar reading.

12. House staff was called and ES was transferred to the Intensive Care Unit where her blood sugar was measured at 14 and she was unresponsive.

AGREED TO:

BY: NEWEVE M. JOHNSON
RESPONDENT

Date: 7/10/00

Neweve M. Johnson
Neweve M. Johnson

AND BY: STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

Date: 7-7-00

Michael McShane
Assistant Attorney General

APPROVED AS TO FORM:

Date: 7/10/00

Mark D. Oettinger, Esq.

DATE 7.10.00 CHAIR: Susan Farnell

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

IN RE:	)	
NEWEVE M. JOHNSON-LIVELY	)	**Docket No: NU 49 - 0299**
License No. 026-0024212	)	

STIPULATION AND CONSENT ORDER

STIPULATION

The Respondent, Neweve M. Johnson-Lively, RN, and the State of Vermont, by its Attorney General, William H. Sorrell, stipulate to the statements of Board Authority, Facts and Understandings set forth below and agree to the entry of the following Consent Order by the Vermont State Board of Nursing as a final order in this matter.

Board Authority

1. The Vermont State Board of Nursing ["the Board"] has authority to issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 26 V.S.A. §1582(a).

2. Failure to comply with the provisions of state statutes or rules governing the practice of the profession is unprofessional conduct upon which the Board can base disciplinary action. 3 V.S.A. §129a(a)(3).

3. Engaging in conduct of a character likely to harm the public is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(7).

4. And, inability to practice nursing competently includes performance of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice. Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B)(2).

5. In the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent professional engaged in similar practice under similar conditions, whether or not actual injury to a client occurred, is unprofessional conduct. 3 V.S.A. §129a(a)(10).

Facts

6. The Respondent (whose address is listed in the database of the Office of Professional Regulation as Apt #1, 73 Pearl Street, Burlington, VT) is licensed as a Registered Nurse under License Number 026 – 0024212.

7. Respondent's license was originally issued on August 11, 1998 and it currently expires on March 31, 2001.

8. In January, 1999, the Respondent was employed by Fletcher Allen Health Care.

9. In the early afternoon of January 31, 1999, the Respondent began work on McLure 5 and was assigned two patients, one of whom was ES; also, she was to be responsible for additional patients as they were admitted.

10. ES had been diagnosed and had received treatment for Non-Q wave MI, hypertension and congestive heart failure.

11. ES has a history of diabetes and had a written order for an insulin sliding scale, for a daily dose of an oral anti-hyperglycemia agent, for finger sticks before each meal and at bedtime, and orders that if ES's blood sugar was lower than 60, she was to receive ½ amp D50W and the house staff was to be notified.

12. At the beginning of her shift, the Respondent checked the physician's orders concerning ES.

13. At 1730 hours, the Respondent did a finger stick on ES and obtained a reading of 46, but the Respondent did not administer the D50W or notify the house staff or follow-up with another finger stick.

14. At 2030 hours, the Respondent looked in on ES who was demonstrating changes in her level of consciousness but did nothing to appropriately assess and follow-up on those changes.

15. At 2130 hours, the Respondent found ES unresponsive and asked for assistance from the Charge Nurse, Susan Stoner, RN, but did not tell Stoner anything about the earlier low blood sugar reading.

16. The Respondent or RN Stoner called Respiratory Therapy to intubate ES, but when a physician(s) arrived, the Respondent did not advise her (them) of the earlier blood sugar reading.

17. House staff was called and ES was transferred to the Intensive Care Unit where her blood sugar was measured at 14.

Charges

18. By failing to follow the physician's orders (administer the D50W or notify the house staff) or take another finger stick after she obtained the blood sugar reading of 46, the Respondent:

    a) engaged in conduct of a character likely to harm the public;

    b) performed unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing nursing practice; and

    c) grossly failed to use and exercise on a particular occasion that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent professional engaged in similar practice under similar conditions.

19. By failing to inform RN Stoner or the Respiratory Therapy physician(s) of the prior low blood sugar reading, the Respondent

    a) engaged in conduct of a character likely to harm the public; and

    b) performed unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing nursing practice.

20. By failing to recognize and appropriately assess the clinical changes in ES's condition and to act upon them in a timely manner, the Respondent

    a) engaged in conduct of a character likely to harm the public; and

    b) performed unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing nursing practice.

Understandings

21. 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.

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

23. The Respondent is not under the influence of any drugs or alcohol at the time this document is being signed.

24. The Respondent agrees that she has had sufficient opportunity to consult with legal counsel before signing this document.

25. The Respondent is voluntarily waiving her right to a contested hearing before the Board of Nursing.

26. The Respondent agrees that the Order set forth immediately below may be entered by the Board of Nursing.

Consent Order

A. Based on the above stipulations, it is **ADJUDGED** as follows:

(1) The "Facts" listed above are true;

(2) The Respondent engaged in conduct of a character likely to harm the public; and

(3) The Respondent performed unsafe or unacceptable patient care and failed to conform to the essential standards of acceptable and prevailing nursing practice;

B. Based on the above stipulation and on the above Findings and Conclusions of this Board, it is **ORDERED** follows:

(1) The Respondent is **REPRIMANDED**;

(2) The Respondent's license is **CONDITIONED** for a period of no less than 12 months, as follows:

(a) Prior to the effective date of this Stipulation and Consent Order Respondent must demonstrate to the satisfaction of the Board that she has done the following regarding education relative to the treatment of diabetic patients:

- Completed five chapters of "A Core Curriculum for Diabetic Education" by Martha M. Funnell and furnish the Board (or the Board's designee) with written verification that Respondent has been granted CEU for said chapters and that a test or tests have been administered as part of that process.

- Present to the Board or the Board's designee written verification of attendance of in-service education sessions attended on October 14, 1999 and February 2, 2000.

- Provide to the Board or the Board's designee specific written information relative to in-service presentations that Respondent will make. Said information will include an outline of each presentation, the date the presentation will be made and to whom it will be made.

(3) During the period of conditional license Respondent may continue to work in her current position at the Visiting Nurses Association Adult Day Program with her current level of supervision. While so employed and during the period of conditional license, Respondent's supervisor shall submit monthly reports to the

Board's designee. Said reports shall contain an assessment of Respondent's performance, the number of diabetic patients currently using the facility, and needs of said patients.

(4) In the event that during the period of her conditional license, Respondent leaves her current employment or work setting, the following conditions shall apply:

(a) Interview with the Board or its designee: The Respondent shall appear in person for interviews with the Board or its designee upon request of the Board or its designee.

(b) Employment and Personal Information: Within five (5) days of the date termination of her current employment, Respondent shall notify the Board, in writing, of any new place of employment, address, and telephone number. Subsequently, within forty-eight (48) hours of any other change of employment, the Respondent shall again notify the Board.

(c) Employers and Nursing Schools: Regarding any employer who employs the Respondent as a nurse and any Nursing School that the Respondent is attending or may in the future attend:

i) Within ten (10) days of the date of entry of this Order and prior to any future employment or attendance at a Nursing School, the Respondent shall provide the employer or the School's Program Director with a copy of this Order and shall inform them of her conditional license status;

ii) The Respondent authorize, and shall take all reasonable steps to ensure that, each employer and, if applicable, the Program Director at a nursing school, responds to all requests of the Board, or its designee, to discuss and document the Respondent's performance, attendance, the existence of any indications of drug use and, in general, the Respondent's compliance with this Order; and

iii) In fulfilling the above authorization, the Respondent must execute a consent to disclose form which meets the requirements of 42 C.F.R. §2.31 and the authorization must allow the information to also be provided to the Office of Professional Regulation investigators and to the Attorney General's Office.

(d) Limitations on Practice:

i) The 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;

ii) The Respondent shall not work as a Charge Nurse;

iii) The 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; and

iv) The Respondent shall not work night shifts.

(5) 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 under the conditioned license, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(6) Costs: The Respondent shall bear all costs of complying with this Consent Order.

(7) 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 this Order.

(8) Automatic Extension of Conditions: If a disciplinary action is opened (based on a complaint of unprofessional conduct or any other legitimate ground) against the Respondent while her license is conditioned, this Order with these conditions shall be automatically extended until the disciplinary matter is concluded.

(9) Petition for a License without Conditions: At any time within sixty days before, or anytime after, the end of the minimum period for the conditioned license (one year), the Respondent may petition the Board to reinstate her license without conditions. In the Petition, the Respondent must demonstrate, to the satisfaction of the Board:

i) That she fully complied with the terms of this Order;

ii) That she poses no danger to the public or the practice of nursing and she will safely and competently perform the duties of a registered nurse; and

iii) That she meets all applicable requirements for reinstatement or renewal of a nursing ~~assistant~~ license.

(10) 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)(8).

(11) 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: NEWEVE M. JOHNSON
RESPONDENT

Date: 3-31-00

Neweve M. Johnson
Neweve M. Johnson

AND BY: STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

Date: 3-30-00

Michael McShane
Assistant Attorney General

APPROVED AS TO FORM:

Date: 3/31/00

Mark D. Oettinger, Esq.

ACCEPTED AND SO ORDERED:

BOARD OF NURSING

Date: July 17, 2000

Susan Farrell
Chairperson