

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

IN RE:

MARK KAVANAGH, R.N.

License No. 026-0023769

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Docket No: NU38-1101

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney, Edward Adrian, and Respondent Mark Kavanagh, who stipulate and agree as follows:

1. The Vermont Board of Nursing has jurisdiction to investigate complaints of unprofessional conduct and approve stipulations and consent orders pursuant to 26 V.S.A. §1582(a) and 3 V.S.A. §§129, 129a and 814(d); and the Administrative Rules for the Office of Professional Regulation and the Board Administrative Rules.
2. The Respondent is a Registered Nurse under License Number 026-0023769.
3. Respondent was originally licensed on or about December 18, 1997 and Respondent's license has a current expiration date of March 31, 2005.
- 3.a. In respect to all of the following factual allegations, the Respondent does not admit to the truth of the allegations, but does not contest that the Board would have a basis to find in favor of the State at a merits hearing.
4. On or about October 31, 2001, Respondent was scheduled to be providing nursing care, including providing inmates with their medications, at the Woodstock Regional Correctional Facility.
5. Respondent was responsible for the morning medications.
6. Respondent failed to administer the morning medications.
7. On or about January 16, 2001, Respondent was scheduled to be providing nursing care at the Woodstock Regional Correctional Facility.
8. Respondent did not show up for his scheduled shift.
9. Respondent failed to administer the requisite medications.

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Office of
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Montpelier, VT 05602

10. On or about August 20, 2001, Respondent was not available when the correctional officers attempted to contact him concerning the need for medical treatment for an inmate with a slipped plate in the inmate's head.
11. In January 2002, Respondent failed to provide proper nursing care to an inmate that had returned from a dental appointment, still under anesthesia, with specific instructions to remove the gauze prior to returning the inmate to his cell. Respondent failed to remove the gauze and returned the inmate to the cell.
12. From April 2001 through January 2002, Respondent improperly delegated to correctional officer(s) the administration of medications.
13. The correctional officers were not properly trained to administer medications.
14. On or about October 4, 2001, Respondent failed to administer Acyclovir to an inmate as required.
15. On or about July 5, 2002, Respondent failed to administer Neurontin to an inmate as required.
16. On or about April 3, 2002, Respondent failed to administer Keflex to an inmate as required.
17. Respondent disputes that the above incidents occurred, however, Respondent does not contest that the State would be able to present evidence to prove these facts at a hearing.
18. Respondent admits that the alleged conduct would constitute unprofessional conduct as set forth below in the Board's Order.
19. 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.
20. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
21. Respondent waives any notification period and requests that this be heard at the next available Board meeting. Respondent specifically waives any claims that any disclosures made by him 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.
22. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

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23. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
24. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing.
25. Respondent agrees that the Board may set forth the Order below.

ORDER

26. Based on the Stipulation above it is **ORDERED AND ADJUDGED** as follows:

A. The Respondent's alleged conduct described in the paragraphs above, taken alone, together or in any combination, constitutes unprofessional conduct in that the Respondent has:

- i. Shown he is unable to practice nursing competently by reason of any cause, in violation of 26 V.S.A. §1582(a)(3), specifically Respondent:
 - a. Performed unsafe or unacceptable patient care; and
 - b. Failed to conform to the essential standards of acceptable and prevailing nursing practice.
- and
- c. Engaged in conduct of a character likely to deceive, defraud or harm the public. 26 V.S.A. §1582(a)(7).

B. The Board of Nursing hereby **CONDITIONS** Respondent's license for **A MINIMUM OF TWO (2) YEARS** from the date of entry of this Order. The **CONDITIONS** are as follows:

(1) 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 **two (2) years** of supervised nursing practice in which Respondent works at least 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.

(2) Health Management Course and Health Assistance Course.

ASSESSMENT

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Montpelier, VT 05602

ASSESSMENT

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Respondent must complete (i.e.: receive a passing grade, if applicable) a course on (1) health management and a course on (2) health assistance with prior approval by the Board or its designee, and then submit written documentation (certificate of completion, etc.) to verify same to the satisfaction of the Board or its designee. These courses must be completed within six months of the date of entry of this Stipulation and Consent Order.

(3) Notification to Employers.

Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting 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 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.

(4) Reports from Employers.

Within one (1) month of the date of entry of this Consent Order and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's performance and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event Respondent is not employed in nursing during any quarter or portion thereof, Respondent shall submit to the Board, in writing, a self-report describing other employment or activities. 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.

Respondent shall sign a consent, upon request of the Board, to authorize Respondent's employer to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Consent Order is in effect.

(5) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has on-site supervision for the entire shift by a registered nurse that is licensed and in good standing.

(6) Types of Employment Prohibited.

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 during the effective period of this Consent Order.

(7) License Renewal.

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In the event Respondent's license is scheduled to expire during the period this Consent Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee, and otherwise maintain qualifications to practice as a nurse in the State of Vermont.

(8) Costs.

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

(9) Violation of the Consent Order.

If Respondent violates the terms of this Consent Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this Consent Order, the conditional license period shall be extended until the matter is final.

(10) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on his license and after formal review by the Board, Respondent's nursing license may be formally restored by appropriate Board action. Respondent shall demonstrate, to the Board's satisfaction that Respondent fully complied with all the terms of this Consent Order. If the Respondent demonstrates to the Board's satisfaction that he has complied with all of his conditions, then any and all conditions shall be removed.

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 the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

STATE OF VERMONT
SECRETARY OF STATE

Dated: 9/17/03

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

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Office of
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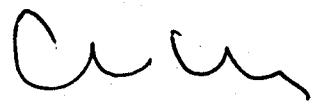
MARK KAVANAGH
RESPONDENT

Dated: 9.12.03

by: [Signature]
Mark Kavanagh

Attorney for Respondent
Approved as to Form:

Dated: 9/16/03

by: 
Attorney for Respondent

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: Sept. 22, 2003

by: 
Chairperson

Dated entered: 9/23/03

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