

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

IN RE:

ANNE G. KLEIN

License No. 026.0024001

Docket No. 2009-387

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Anne G. Klein, RN, 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.

Statement of Facts

2. Anne G. Klein (the "Respondent") of Jericho, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0024001. This license was originally issued on or about May 27, 1998 and is currently set to expire on or about March 31, 2011.
3. At all times relevant, Respondent was employed as a Registered Nurse at Vermont Women's Wellness (the "Facility"), located in Williston, Vermont.
4. On or about June 11, 2009 in a Mandatory Report of Unprofessional Conduct to the Board, Nursing Supervisor L.D. advised that Respondent had been terminated from the Facility on or about June 3, 2009, after Respondent was observed treating patients while medically unable to do so.
5. On or about June 3, 2009, L.D. spoke with Drs. A.V. and D.C. and all three agreed that Respondent was not capable of continuing her activities due to a migraine, and therefore, it was in the best interests of patient care to cancel Respondent's remaining appointments for that day and the next day.

6. On or about February 8, 2010 in a letter to State Investigator Gregory Kelly, Respondent advised that on or about June 3, 2009, she had had a migraine for the previous seven (7) days and was experiencing symptoms of dizziness, tunnel vision, blurred vision, nausea, and throbbing pain. Respondent advised that as a result, her balance was impaired, her concentration decreased, and her speech was slightly slurred.
7. On or about August 26, 2010 in an interview with Investigator Kelly, Dr. A.V. advised that what concerned her was that Respondent was not aware that she was impaired. Dr. A.V. advised that Respondent persisted in taking care of patients despite not functioning well, but denied that there was a problem.
8. On or about January 11, 2011 the Respondent was evaluated by Dr. Tolge of The Headache Center of Northeastern New York and he stated her migraines are currently well controlled, she is responding well to her medication protocol and she is able to work full time.
9. On or about January 6, 2011 and on or about January 24, 2011 Dr. Alan Zaur, a board certified psychiatrist who has a sub-specialty interest in complicated migraines, evaluated the Respondent and found that the Respondent while she suffers from migraines does not have an independent psychiatric diagnosis nor does she have a substance abuse problem.
10. By continuing to practice nursing, despite having a condition(s) that impacted her ability to practice nursing competently, Respondent has violated 3 V.S.A. § 129a(a)(5) and 3 V.S.A. § 129a(a)(3).

Charges

11. The act(s), omission(s), and/or circumstance(s) described above, if proven, would constitute grounds for discipline because the Respondent would have committed unprofessional conduct in violation of:
 - a. 3 V.S.A. § 129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so); and,
 - b. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Understandings

12. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove at least some of charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary and appropriate.
13. 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.
14. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
15. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
16. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
17. 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.
18. 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.
19. 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. The Board of Nursing hereby **CONDITIONS** the Respondent's RN license **FOR A MINIMUM OF SIX MONTHS** from the date of entry below. The conditions are as follows:

(1) Re-issue of License.

Upon the imposition 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 a

minimum of six (6) months of supervised nursing practice in which she 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. The Respondent shall be prohibited from working more than sixty (60) hours per week during the conditioned period.

(3) 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 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 submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

(4) Reports from Employers/Program Directors.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and monthly thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (i.e., consistently meeting all standards of nursing practice) and attendance.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of her performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All nursing program reports shall indicate satisfactory performance (i.e., consistently meeting all standards of nursing practice) and attendance.

(5) Practice Under Supervision.

Respondent shall practice nursing 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 with the Board.

(6) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing or nursing assistant license during the effective period of this Consent Order.

(7) Out-of-State Practice.

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, none of the time spent practicing nursing 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 nursing practice so long as the Respondent can still comply with the provisions of this Consent Order.

If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

(8) Notification of Place of Employment/ Personal Address/Telephone Number.

Within ten (10) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of her 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 (including resignation or termination), personal address, or telephone number.

(9) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont nursing license within thirty (30) days of the date of entry of this Order. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(10) 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 as a nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(11) Costs.

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

(12) 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 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.

(13) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order.

- 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.

CHARGE

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATEDated: 5/3/11By: S. LaurettiS. Lauren Hibbert
State Prosecuting AttorneyANNE G. KLEIN
RESPONDENTDated: 5/3/11By: A. Klein

Anne G. Klein

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 5-3-11By: Beth Danon

Beth Danon, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 5-9-11By: Ellen Reff

Chairperson

Date of Entry: 5/10/11

na.klein.edu