

Williston

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

IN RE:

GEORGE GUY LAVIGNE

License No. 025.0005734

)
) Docket No. 2008-452 (NU63-1108)
)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, George Guy Lavigne, LPN, 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. George Guy Lavigne (the "Respondent") of Williston, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0005734. This license was originally issued on or about May 21, 1985 and is currently set to expire on or about January 31, 2012.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Fletcher Allen Healthcare (the "Facility"), located in Burlington, Vermont.
4. On or about November 21, 2008 in a report to the Board, Director of Employee & Labor Relations R.E. stated that Respondent was placed on administrative leave pending a full investigation of reports of alleged patient abuse.
5. On or about December 16, 2008 in an interview with State Investigator Jeffrey Jones, Respondent's former patient, L.D., reported that on or about November 5, 2008, L.D. was a patient of the Facility's Rehabilitation Center getting treatment for a stroke. L.D. stated that on that morning, he became incontinent before Respondent answered his call bell. L.D. stated that Respondent appeared upset or angry after seeing that L.D. had become incontinent. L.D. stated he tried to apologize to Respondent for

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being incontinent, saying he was sorry for being a "pain in the ass," to which L.D. stated Respondent replied, in effect, "You would be less of an asshole if you would just use the call button." L.D. stated that Respondent was physically rough with L.D. while changing his bedding and cleaning L.D. L.D. stated that L.D. made a remark regarding the back of his gown being wet due to sweat, to which Respondent replied, "That's not sweat, that's piss." L.D. stated that after this interaction, L.D. told other Facility staff that he didn't want Respondent coming back to his room.

6. Moreover, in this same interview, L.D. stated that on another occasion, L.D.'s wife was in his room and used L.D.'s call bell to summon for assistance. L.D. stated that when Respondent entered L.D.'s room and saw that L.D.'s wife had possession of the call bell, Respondent grabbed the call bell from her hand and threw it onto the bed beside L.D. and told L.D. that he had to start using the call bell himself when he needed assistance. L.D. had also reported to hospital staff that on another occasion, Respondent had been working on the side of L.D.'s bed when the bed malfunctioned, and Respondent kicked the bed in anger.
7. On or about February 4, 2009 in an interview with Investigator Jones, J.B., L.D.'s daughter, stated that she was with L.D. on the morning of November 5, 2008, and when Respondent entered L.D.'s room, he became instantly angry and was being very loud and at times shouted at L.D. J.B. stated that Respondent was physically rough with L.D. and that L.D. complained several times to Respondent during care that Respondent was hurting L.D. J.B. reiterated that Respondent stated that L.D. would be less of a pain in the ass if L.D. would use the call bell. Moreover, J.B. advised that Respondent stated that it was not sweat on L.D.'s gown, but "piss."
8. On or about February 5, 2009 in an interview with Investigator Jones, S.E., RN, reported that she was the first nurse to respond to L.D.'s call bell on or about November 5, 2008. S.E. stated that Respondent used the word "ass" with L.D. S.E. stated that she could not tell whether Respondent was intentionally being rough with L.D. because Respondent is usually a little rough with people. S.E. stated, "That's just [Respondent] . . . That's the way he is with people." S.E. stated that she was sure from the way Respondent was moving L.D. that it would cause L.D. pain. S.E. stated that Respondent does have a temper and can get angry, especially if patients are incontinent.
9. A review of Respondent's personnel file reveals in part the following:
 - a. On or about November 8, 2005, Respondent was placed on administrative leave after Patient D.J. claimed that Respondent was verbally inappropriate and physically abusive with D.J. D.J. advised the Facility that Respondent was overly physical in a commode transfer, and transferred D.J. alone when the transfer order called for a two-person transfer. A physician noted bruising on D.J.'s torso and leg, which would be consistent with D.J.'s allegations, but the physician would not confirm that the bruising was a result of Respondent's actions.

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- b. On or about November 17, 2005, Respondent received a Letter of Understanding with the statement that Respondent "Does not foster a work environment characterized by appropriate attitude, dedication to excellence, teamwork, and meeting the needs of patients and families. Was found not to engage in clear, professional, and supportive communication with patients." The Letter of Understanding was issued as a result of three separate incidents/patient complaints. Prior to the Letter of Understanding being issued, Respondent had been verbally counseled in response to another patient's complaint that the patient was afraid to use his call light because he was intimidated by Respondent.
- c. On or about November 13, 2008 in an internal investigation regarding L.D.'s complaint, three Facility RNs, S.E., D.D. and J.M., expressed concerns regarding Respondent's temper, Respondent's interactions with patients, and general discomfort working with Respondent.
- d. On or about November 25, 2008 as a result of L.D.'s complaint and information obtained in the subsequent internal investigation, Respondent received a final Written Warning and an action plan which included counseling on anger management, sensitivity training, and communication skills; a move to day shift for more direct supervision by Inpatient Rehabilitation management; a change in floors; and a change in work schedule.

10. The Respondent does not wish to practice as a nurse at this time.

Charges

- 11. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:
 - a. 3 V.S.A. § 129a(b)(1) and (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: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - b. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rule 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

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above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below.

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 his 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 he 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 his 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.
20. Respondent does not contest that the State could prove the facts as alleged above by a preponderance of the evidence if this matter went to a merits hearing and therefore 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 changes Respondent's practical nursing license status to **INACTIVE-CONDITIONED**, commencing with the date of entry below. Prior to requesting reinstatement, Respondent must successfully complete (i.e., receive a passing grade, if applicable) a patient communication course focusing on patient communication, with prior approval by the Board or its designee, and then submit written documentation of completion (certificate of completion, etc.) to verify the same to the satisfaction of the Board or its designee. Respondent's license shall not be reinstated until this prerequisite has been met. Thereafter, if Respondent requests and is granted reinstatement of his practical nursing license, his license will be **CONDITIONED FOR A MINIMUM OF ONE (1) YEAR** commencing with the date of reinstatement. The conditions will be as follows:

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(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 a **minimum of one (1) year** of supervised nursing 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.

(3) Anger Management Course.

The Respondent will receive credit for this requirement for the counseling that he has already received from the Facility.

(4) 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 license reinstatement 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.

(5) Reports from Employers/Program Directors.

Within one (1) month of the date of reinstatement 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 (ie., 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 his performance and attendance. These reports shall be submitted in writing on forms

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issued by the Board. All nursing program reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

(6) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse that is in good standing with the Board.

(7) 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.

(8) 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.

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

Within ten (10) days of the date of reinstatement, 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.

(10) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), he must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of his 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.

(11) 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.

(12) Costs.

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

(13) 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.

(14) 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 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.

AGREED TO:

Dated: 10-20-10

STATE OF VERMONT
SECRETARY OF STATE

By: Betsy Ann Wrask
Betsy Ann Wrask
State Prosecuting Attorney

Dated: Oct 27, 2010

GEORGE GUY LAVIGNE
RESPONDENT

By: George Guy Lavigne
George Guy Lavigne

APPROVED AND SO ORDERED:

Dated: 11-8-10

VERMONT BOARD OF NURSING

By: Gla. Raff
Chairperson

Date of Entry: 11/9/10
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