

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

IN RE:

SUSAN A. LUNDY

License No. 026-0022303

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Docket No: NU 28-1003

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and Respondent Susan A. Lundy, R.N., who stipulate and agree as follows:

Board Authority

- 1) The Vermont State Board of Nursing ("Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.
- 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) Being habitually intemperate is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(5).
- 4) Having made or having caused to be made a false, fraudulent or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing or a felony which evinces an unfitness to practice nursing is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(1).
- 5) The inability to practice nursing by reason of any cause is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(3).
- 6) The inability to practice nursing competently includes failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN, Chapter 4, Rule IV(II)(B)(2).
- 7) Any cause includes, but is not limited to, reasons of physical or mental disability or use of chemicals or any other type of materials. ARBN, Chapter 4, Rule IV(II)(C).

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Facts

- 8) The Respondent is licensed by the State of Vermont as a Registered Nurse under License Number 026-0022303.
- 9) Respondent's license was originally issued on July 19, 1995 and Respondent's license is currently set to expire on March 31, 2005.
- 10) At all times relevant, Respondent was employed at Fletcher Allen Health Care ("FAHC") in Burlington, Vermont.
- 11) On or about August 23, 1996, Respondent was under the influence of alcohol during her shift at FAHC. The Senior Administrative Nurse Coordinator at FAHC observed Respondent's behavior as consistent with being intoxicated and detected that Respondent had an odor of alcohol on Respondent's breath. Respondent alleges that she commenced alcohol counseling shortly thereafter.
- 12) On or about July 8, 2003, a patient reported to FAHC staff that Respondent had an odor of alcohol on Respondent's breath. Another nurse confirmed the patient's observations. The Respondent denied drinking alcohol and her behavior appeared appropriate. FAHC did not report the incident.
- 13) On or about September 15, 2003, during her shift at FAHC, two of the Respondent's co-workers reported to the Nurse Manager at FAHC that Respondent had an odor of alcohol on Respondent's breath.
- 14) On or about September 18, 2003, when confronted about the September 15th incident, the Respondent admitted to the Nurse Manager, an employee from Human Resources and the Administrative Director that the Respondent had an alcohol problem in the past. Respondent denied that she had used alcohol that day.
- 15) On or about February 14, 2003, Respondent submitted her Registered Nurse Renewal Application for the Period Covering April 1, 2003 through March 31, 2005.
- 16) On the Renewal Application, the Respondent answered "No" to question 3 of Section B: "Have you ever been convicted of a crime other than a minor traffic violation?"
- 17) Respondent informed State Investigator Jackie Cholewa that the Respondent had been convicted of the offense of DWI in New Hampshire in late 2002. Respondent alleges that she believed that the offense was similar to a minor traffic violation.

Charges

- 18) The above acts, omissions and/or circumstances described above, constitute grounds for discipline because Respondent violated:

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- i. 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession); and
- ii. 26 V.S.A. §1582(a)(5); and
- iii. 26 V.S.A. §1582(a)(1) (Having made or having caused to be made a false, fraudulent or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing or a felony which evinces an unfitness to practice nursing); and
- iv. 26 V.S.A. §1582(a)(3) (The inability to practice nursing competently by reason of any cause) (The inability to practice nursing competently includes failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN, Chapter 4, Rule IV(II)(B)(2)) (Any cause includes, but is not limited to, reasons of physical or mental disability or use of chemicals or any other type of materials pursuant to ARBN, Chapter 4, Rule IV(II)(C)).

Understandings

- 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 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.
- 22) Respondent voluntarily waives her right to charges and a contested hearing before the Board of Nursing.
- 23) Respondent agrees that the State has sufficient evidence for the Board to find that Respondent has engaged in unprofessional conduct and that the Order set forth below may be entered by the Board.

ORDER

Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because Respondent violated:

- i. 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession); and

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- ii. 26 V.S.A. §1582(a)(5); and
- iii. 26 V.S.A. §1582(a)(1) (Having made or having caused to be made a false, fraudulent or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing or a felony which evinces an unfitness to practice nursing); and
- iv. 26 V.S.A. §1582(a)(3) (The inability to practice nursing competently by reason of any cause) (The inability to practice nursing competently includes failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN, Chapter 4, Rule IV(II)(B)(2)) (Any cause includes, but is not limited to, reasons of physical or mental disability or use of chemicals or any other type of materials pursuant to ARBN, Chapter 4, Rule IV(II)(C)).

B. The Board of Nursing hereby **SUSPENDS THE RESPONDENT'S LICENSE INDEFINITELY**. Before applying for reinstatement, Respondent must obtain (1) an independent evaluation report by a psychologist, mental health counselor or psychiatrist pre-approved by the Board, and an independent evaluation report by a licensed professional specializing in alcohol abuse pre-approved by the Board, verifying that Respondent is capable of returning to competent practice and; (2) treatment with an alcohol abuse counselor pre-approved by Board and the Respondent must be able to show at a minimum that the Respondent has been completely alcohol free for the entire period between the date of entry of this Stipulation and the request for reinstatement and that the results of the treatment with the alcohol abuse counselor indicate that the Respondent does not present a risk to the safety, health or welfare of her patients. Additionally, **the Respondent may not apply for reinstatement for a MINIMUM PERIOD OF ONE (1) MONTH.**

C. If Respondent Lundy seeks reinstatement at a future time, once reinstated, the following conditions will apply:

The Respondent's license shall be **CONDITIONED** for a minimum period of **THREE (3) YEARS** and the following conditions shall apply:

(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 three (3) years 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. Respondent shall be prohibited from working more than forty-eight (48) hours per week. Respondent's license is additionally conditioned as follows.

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(3) Completion of Alcohol Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue alcohol abuse counseling with a treating professional approved by the Board until the treating professional shall certify in writing to the Nursing Board that such counseling is no longer necessary. Respondent shall enter into and comply with the alcohol abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

Respondent shall provide a copy of this Stipulation and Consent Order to her treating professional and cause her treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional.

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the imposition of the conditions and subsequent reports are due every month thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(6) Reports from Employers.

Within one (1) month of the date of the imposition of the conditions 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 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.

(7) Practice Under Supervision.

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

(8) Participation in Recovery Group

Respondent shall participate as recommended by her treating professional, in Alcoholics Anonymous meetings and/or other recovery group.

(9) Random Alcohol Testing.

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Respondent shall submit to random alcohol screening at the request of the Board or its designee. Respondent shall designate a person, who has been approved by the Board or its designee, to administer random alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(10) Abstain from Alcohol.

Respondent shall abstain completely from the consumption or possession of alcohol.

(11) Interview with the Board or its designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(12) Types of Employment Prohibited.

Respondent shall not work as a supervising nurse. 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.

(13) Out of State Practice/Residence.

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

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

Within five (5) days of the date of the imposition of the conditions, Respondent shall notify the Board, in writing, of her current place of nursing employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number. Respondent shall provide a copy of this Consent Order to all nursing employers, current and future, and shall inform them of the conditional status of her license.

(15) 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 she has otherwise complied with the requirements for license renewal.

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(16) Release of Information Forms.

In fulfilling the conditions of this Order which require the Respondent to authorize various persons to report information or to discuss the Respondent with the Board, the Respondent must execute a consent to disclose form which meets the requirements of 42 C.F.R. §2.31. The authorization must allow the information to also be provided to the Office of Professional Regulation investigators. Any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order

(17) Costs.

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

(18) 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.

(19) 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. The Respondent must also present proof of successful alcohol abuse rehabilitation and she must demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a Registered Nurse.

D. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

E. 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).

F. 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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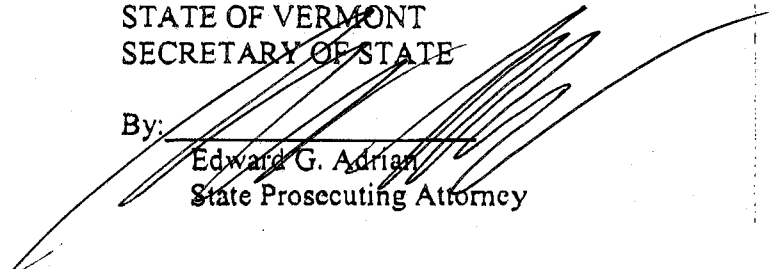


Prosecuting Attorney
Office of
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Montpelier, VT 05602

AGREED TO:

Dated: 11/8/09

STATE OF VERMONT
SECRETARY OF STATE

By: 

Edward G. Adrian
State Prosecuting Attorney

SUSAN A. LUNDY
RESPONDENT

Dated:

1/8/04

By:

Susan A. Lundy
Susan A. Lundy

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated:

01/12/04

By:

Susan Farrell
Chairperson

Date of Entry:

1/16/04

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