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

IN RE:	)	
AMY MACDONALD	)	Docket No. 2011-103 (NU)
License No. 026.0042103	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Amy Macdonald, 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. Amy MacDonald (the "Respondent") of Jericho, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0042103. This license was originally issued on or about May 19, 2008 and expires on or about March 31, 2013.

3. At all times relevant, Respondent was employed as a Registered Nurse at Fletcher Allen Health Care (the "facility"), located in Burlington, Vermont.

4. On or about February 22, 2011, K.M., the Director of Pharmacy at the facility, notified the Office of Professional Regulation regarding possible diversion of narcotic medications.

5. According to K.M., the facility initiated an internal investigation in the medication practices of Respondent after her name was listed on the Anomalous Usage Report as a "high user". An audit of Respondent's medication practices conducted by R.C., the Nurse Manager at the facility, revealed multiple irregularities regarding Respondent's medication administration practices.

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

6. On or about March 2, 2011 R.C., the Nurse Manager at the facility, stated that the audit of Respondent's medication administration practices revealed a failure to document the administration of controlled subtances and/or the administration of medications outside the range of the physician's orders.

7. Respondent consistently denied diversion of narcotics from the facility and stated that her errors were due to poor practices and the change in the computer system.

Stipulated Facts – Medical Administration Records

8. On or about March 2, 2010, R.C. provided the OPR with the medication administration records in which irregularities occurred. The records received by OPR consist of Physician Orders, MAR documentation, PYXI reports and summaries for each individual record. The facility's audit of these records revealed as follows:

a. On or about November 14, 2010, Respondent utilizes Urgent Need Override removing 2 mg of Hydromorphine at 07:37. There are no entries documented in patient's chart to reflect the administration of the medication to patient. Respondent removed 2 mg of Hydromorphone (Dilaudid) at 14:48. There are no entries documented in the patient's chart to reflect the administration of the medication to the patient.

b. On or about October 14, 2010, Respondent removed one Oxycodone-acetaminophen (Percocet) 5-325 mg tablet at 11:47. There are no entries documented in the patient's chart to reflect the administration of the medication to the patient. There is no documentation referencing a pain scale.

c. On or about October 15, 2010, Respondent removed one Oxycodone-acetaminophen (Percocet) 325 mg tablet at 11:18; there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. There is no documentation referencing a pain scale. The patient was discharged at the same time.

d. On or about October 13, 2010, Respondent removed one Oxycodone (Roxicodone) IR 5-20mg tablet at 11:58 a.m.. There are no entries documented in the patient's chart to reflect the administration of the medication to the patient. There is no documentation referencing a pain scale.

e. On or about October 26, 2010, Respondent removed two Clonazepam (Klonopin) 1 mg tablets at 10:21 a.m., and documented administration on MAR as 09:00 (recorded at 12:01 p.m.).

f. On or about October 19, 2010, Respondent removed 10 mg of Oxycodone (Roxicodone) IR at 08:08; documented administration at 08:10 (recorded at 12:02); documented 15 mg given at 12:08 (recorded at 12:09), no removal from pyxis to support administration. Respondent removed 15 mg at 13:23; there are

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed 15 mg at 14:52; documented administration and recorded at 14:53. Administration was early considering that a dose was administered at 13:23 or later.

g. On or about December 2, 2010, Respondent removed a Hydromorphone (Dilaudid) 4 mg tablet at 09:30; and documented administration at 09:31. The previous administrations of the medication had been only 2 mg with pain scores of 4-6. The order was discontinued at 10:30 a.m. Respondent removed a Hydromorphone (Dilaudid) 2 mg tablet, at 10:52 a.m.; documented administration at 10:53 a.m.; removed a 4 mg tablet at 13:14; and documented administration at 13:18. Respondent removed a Morphine (MS IR) 15 mg tablet at 16:06; the administration was not documented by Respondent. The administration of the medication was recorded by A.L., an RN at 19:19. Respondent removed a 15 mg at 17:34; the administration was not documented by Respondent. The administration of medication was recorded by A.L. at 19:19. The dose administered to patient was earlier than prescribed by the medication order.

h. On or about December 2, 2010, Respondent removed a Hydromorphone (PF) (Dilaudid) 1 mg/ml injection at 18:51, documented 0.5 mg waste, documented administration of 0.5 mg to patient at 18:58. On or about December 3, 2010, Respondent removed a Hydromorphone (PF) (Dilaudid) 1.0 mg from pyxis at 13:54; documented .5 mg waste; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed 1.0 mg from pyxis at 18:49, documented .5 mg waste and administration of the medication at 18:52.

i. On or about December 3, 2010, Respondent removed a Pregabalin (Lyrica) 150 mg capsule from pyxis at 15:07, documented the administration time as 14:00. The administration was recorded at 15:13.

j. On or about December 4, 2010, a Fentanyl (Duragesic) patch 75 mcg was changed early by night nurse, J.R. at 02:00 due to Patient's increased pain level. J.R. documented administration of the transdermal patch and cancelled the scheduled administration time of 10:45 a.m. Respondent removed the patch from pyxis at 15:00 and wasted the patch at 15:20 with E.A., an R.N. The wasted patch was documented by K.M., RN instead of the Respondent. Investigator Palmisano interview Respondent regarding this medication discrepancy. Respondent explained that she was unaware that the patient's Fentanyl patch had been changed earlier even though it was reflected in the patient's record. When she realized the patch had already been changed, she wasted the patch she had withdrawn as she had already removed it from the packaging.

k. On or about December 8, 2010, Respondent removed two Oxycodone-acetaminophen (Percocet) 5-325 mg tablets from pyxis at 12:13 p.m., and the administration of the medication was documented at 12:16 p.m. Respondent

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

removed two tablets from pyxis at 14:14. The medication was not administered to patient. The tablets were wasted by Respondent at 14:28. Respondent removed two tablets from pyxis at 18:02, and the administration of the medication was documented at 18:05. Respondent removed a Lorazepam (Ativan) 0.5 mg tablet from pyxis at 14:15; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed a Lorazepam (Ativan) 2 mg from pyxis and documented the administration of the medication at 19:03.

l. On or about December 8, 2010, Respondent removed an Oxycodone-acetaminophen (Percocet) 5-325 mg tablet from pyxis at 10:38 a.m., and documented the administration of the medication to the patient at 10:40 a.m. Respondent removed 1 tablet from pyxis at 13:00; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. On or about December 9, 2010, the Respondent removed 1 tablet from pyxis at 12:06 p.m. and documented the administration of the medication to the patient at 12:09 p.m. Nursing notes indicate that the patient was discharged from the unit at 10:44 a.m.; however, the PRISM discharge time is noted as 12:08.

m. On or about December 15, 2010, the patient was medicated in IR with 6 mg of Hydromorphone (Dilaudid). Respondent removed 6 mg from pyxis at 13:08 and documented the administration of medication to the patient at 13:10. The administration of the medication was two hours earlier than what was prescribed by the medication order.

n. On or about December 20, 2010, Respondent removed a 0.5 mg tablet of Lorazepam (Ativan) from pyxis at 08:38; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed a 0.5 mg from pyxis at 08:46; documented the administration of the medication to the patient at 08:49 and returned 0.5 mg to pyxis at 08:53. Respondent removed 1 mg tablet of Lorazepam (Ativan) from pyxis at 14:34; however, the medication is not administered to patient. The medication is restocked into pyxis at 14:38. Respondent removed a 0.5 mg tablet from pyxis at 14:39 and the medication administered to the patient at 14:42. Respondent removed a 0.5 mg tablet from pyxis at 18:59 and documents that the medication was administered to the patient at 17:00. The documentation occurred at 19:04.

o. On or about December 26, 2010, Respondent removed 2 Oxycodone (Roxicodone) IR 5-15 tablets from pyxis at 12:40 p.m.; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed 2 tablets from pyxis at 17:53 p.m.; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient or a pain scale.

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

p. On or about January 11, 2011, Respondent removed 3 Oxycodone (Roxicodone) IR tablets (15 mg) from Pyxis at 18:05 with override for urgent need utilized. 10 mg documented as administered to the patient at 18:08. 5 mg unaccounted for and not documented as administered or wasted.

q. On or about January 31, 2011, Respondent removed an Oxycodone (Roxicodone) IR 5 mg tablet from pyxis at 10:05 a.m.; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed 5 mg from pyxis at 10:05 a.m.; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient. Respondent removed 10 mg from pyxis at 14:43. The administration of the medication to the patient is documented at 14:45.

r. On or about February 1, 2011, Respondent removed a Hydromorphone (Dilaudid) 2 mg tablet from pyxis at 15:52 via override/urgent need. The administration of the medication documented as occurring at 15:00. The actual time documentation recorded at 16:05. Respondent removed one 2 mg tablet from pyxis at 17:40; however, there are no entries documented in the patient's chart to reflect the administration of the medication to the patient.

9. Prior to entering into this Stipulation Respondent has undergone an independent evaluation for drugs and alcohol with Licensed Alcohol and Drug Abuse Counselor Holly Tuck who stated that Respondent does not have an addiction problem or history and Respondent does not present a risk to the health or safety of the public. Furthermore, before entering into this Stipulation Respondent had three random drug and alcohol tests within forty five (45) days. All of these tests were negative for both alcohol and drugs.

10. Respondent has committed unprofessional conduct because she has made inaccurate and misleading entries regarding the time of medication administered; has neglected to document the administration of controlled substances and/or pain assessment; and has administered medications outside the written physician's orders.

Violations

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. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) which includes performing unsafe or unacceptable patient care pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(1); and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(2);

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

b. 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

c. 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:

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

A. The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice nursing **for one (1) year 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 one (1) year** 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 forty eight (48) hours per week during the conditioned period.

(3) Documentation Course.

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a documentation course 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. This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order.

(4) Administration of Controlled Substances Course.

Respondent must successfully complete (i.e., receive a passing grade, if applicable) an administration of controlled substances course 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. This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order.

(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 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.

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

(5) 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 (ie., consistently meeting all standards of nursing practice) and attendance. The Respondents employer shall perform monthly medication audits on the Respondent's work, the results of which shall be included in the employer's monthly reports to the Board. The employer will give a copy of the report to the Board to the Respondent.

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 (ie., consistently meeting all standards of nursing practice) and attendance.

(6) Practice Under Supervision.

Respondent shall practice nursing 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.

(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 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

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

of any change in employment (including resignation or termination), 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), 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.

(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 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.

(12) Costs.

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 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.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602

Dated: 5/23/12

By: S. Lauren Hibbert
State Prosecuting Attorney

AMY MACDONALD
RESPONDENT

Dated: 5-17-2012

By: Amy MacDonald

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 5/22/2012

By: Brooks McArthur, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 6/11/12

By: Chairperson

Date of Entry: 6/12/12

nu.macdonald.stp

STATE OF VERMONT

Prosecuting Attorney
Office of
Professional Regulation
National Life Building
Second Floor North
Montpelier, VT
05620-3602