

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

IN RE:

JOSEPH R. MCINTYRE

License No. 026-0019751

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Docket No. NU90-0606

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Joseph R. McIntyre, R.N., 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, 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 ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Joseph R. McIntyre (the "Respondent") of South Royalton, Vermont is a licensed nurse holding license number 026-0019751, issued by the State of Vermont. This license was originally issued on or about September 17, 1990 and is set to expire on March 31, 2009.

3. At all times relevant the Respondent was employed as a nurse at Southern State Correctional Facility (the "Facility") located in Springfield, Vermont.

4. By way of history, the Respondent's license was warned pursuant to a Findings of Fact, Conclusions of Law and Order entered by the Board on or about January 28, 2005. (Attachment A). The Respondent received the warning due to several inappropriate remarks the Respondent made regarding a patient, which the patient overheard. (Attachment A).

5. On or about March 13, 2006, while the Respondent was conducting the medication pass, inmate D.G. refused to take his medications because he thought he had not received one of his medications. A few moments later D.G. located the missing medication and the Respondent inquired whether D.G. was going to take his medication or not. D.G. became agitated by the Respondent's remark and began yelling at the Respondent. At that time, the Respondent grabbed D.G.'s hand, attempting to retrieve the medication from D.G. A correctional officer present at that time, J.S., ordered the Respondent to release D.G.'s hand,

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but the Respondent would not release D.G. D.G. eventually freed himself from the Respondent's grasp and stated that he was going to knock the Respondent's head off. To this the Respondent replied, "Why don't you shut up you little faggot!"

Charges

6. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated:

- i) 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 and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Rule IV(II)(B)(1) and (2);
- ii) 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. Failure to practice competently includes: 1) performance of unsafe or unacceptable patient or client care; and/or 2) failure to conform to the essential standards of acceptable and prevailing practice); and
- iii) 3 V.S.A. §129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Understandings

7. 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.

8. 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.

9. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

10. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.

11. 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.

12. 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.

13. Respondent agrees that the Order set forth below may be entered by the Board.

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ORDER

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

A. The Board of Nursing hereby **CONDITIONS** Respondent's license to practice nursing for a **MINIMUM PERIOD OF TWO (2) YEARS** commencing with the date of entry of this Consent Order. 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 **two (2) years** of supervised nursing practice in which he 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.

(3) Anger Management Course.

Respondent must successfully complete (i.e.: receive a passing grade, if applicable) a course focusing on anger management with prior approval by the Board or its designee, and then submit written documentation (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 during the conditioned period 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 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.

In the event Respondent is attending a nursing program which has a clinical portion which involves actual patient care, he shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Stipulation and Consent Order and ability of the program to comply with its conditions during clinical experience.

(5) Reports from Employers.

Within one (1) month of the date of entry of this Order and **monthly** thereafter, Respondent shall cause every nursing 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.

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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. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(6) Practice Under Supervision.

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

(7) 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.

(8) 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. Respondent's present practice as a registered nurse employed by the University of Massachusetts Medical School's Correctional Health Program at the Massachusetts Correctional Center in Concord, Massachusetts, is hereby approved.

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

Within five (5) days of the date of entry of this Order, 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) 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.

(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

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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 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:

8/3/07

STATE OF VERMONT
SECRETARY OF STATE

By:

[Signature]
Edward G. Adrian
State Prosecuting Attorney

JOSEPH R. MCINTYRE
RESPONDENT

Dated:

7/29/07

By:

[Signature]
Joseph R. McIntyre

APPROVED AS TO FORM:

Dated:

26 July 2007

ATTORNEY FOR RESPONDENT

By:

[Signature]
William J. Donahue, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated:

Aug. 13, 2007

By:

[Signature]
Chairperson

Date of Entry:

8/14/07

nu.mcintyre.stip

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