

E Barre

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

IN RE: SUSAN MARIE MCWHINNEY) DOCKET No. NU12-0804
License No. 025-0006733)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Susan Marie McWhinney, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the Administrative Rules of the Board of Nursing ("ARBN"); and the rules of the Vermont Office of Professional Regulation.

Statement of Facts

2. Susan M. McWhinney (the "Respondent") of East Barre, Vermont is a licensed practical nurse holding license number 025-0006733, issued by the State of Vermont. This license was originally issued on or about October 16, 1991 and is currently set to expire January 31, 2006.

3. The Respondent's license is currently suspended pursuant to a Summary Suspension Order entered by the Board of Nursing on September 15, 2004. This discipline was based upon the facts below.

4. At all relevant times, the Respondent was practicing as a licensed practical nurse and provided home health and personal care to E.H. in Colchester, Vermont and other locations in Vermont. E.H. is 93 years old and requires assistance in her daily living.

5. In or about June 2004, the Respondent utilized the credit card of E.H. without the permission of E.H. The Respondent charged approximately \$661.36 at several stores located in the South Burlington, Vermont area. The Respondent used the credit card to buy among other things groceries, clothes, linen and cigarettes. The Respondent did not have E.H.'s permission or authority to make the charges to the credit card.

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6. On or about August 30, 2004, the Respondent admitted to Chief Investigator Ronald West that she had taken and utilized E.H.'s credit card without E.H.'s permission.

7. Based upon the Respondent's conduct, the Respondent was convicted of and sentenced on January 7, 2005 in Chittenden County District Court for Exploitation of the Elderly, a violation of 3 V.S.A. §6902(6)(A). The Respondent received an indefinite probationary sentence with standard and special conditions. The Respondent has completed and was discharged from probation on August 23, 2005.

Charges

8. The above acts and circumstances, alone or in combination, violate:

- i. 26 V.S.A. §1582(a)(7) (engages in conduct of a character likely to deceive, defraud or harm the public) which includes diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN, Chapter 4, Rule IV(II)(D)(4).
- ii. 3 V.S.A. §129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).
- iii. 3 V.S.A. §129a(a)(9) (having been convicted of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession).

Understandings

9. 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.

10. 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.

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

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

13. 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.

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14. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing.

15. 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 license to practice nursing for a minimum period of **ONE (1) YEAR** commencing with the date of entry of this Stipulation and Consent Order. The conditions are as follows:

(1) Issuance 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 one (1) year of supervised nursing practice in which she 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 as a nurse. Respondent's license is additionally conditioned as follows.

(3) Probation.

Respondent shall comply with all terms of her probation resulting from the above convictions. She shall sign written authorizations upon request authorizing the Board, its designees, investigators and the Office of Professional Regulation to communicate with, and receive documents from, her probation officer(s).

(4) Completion of Mental Health Counseling and Treatment Plan.

Respondent shall enter into and continue mental health 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 mental health treatment plan approved by the Board and the treating professional.

(5) 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.

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(6) 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 commencement 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.

(7) 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 commencement of nursing employment and 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, she 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.

(8) Reports from Employers.

Within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. 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 submit to the Board, on a monthly basis, a written evaluation of her 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.

(9) Practice Under Supervision.

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

(10) Types of Employment Prohibited.

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Respondent shall not work as a supervising nurse, with the exception of supervising LNAs and other unlicensed assistive persons. 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.

(11) 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.

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

Within five (5) 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, personal address, or telephone number.

(13) Notification to Other States.

In the event that the Respondent is licensed as a nurse in any other state(s), she must inform the nurse 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.

(14) 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.

(15) Costs.

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

(16) 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.

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(17) 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 mental health 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 an L.P.N.

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

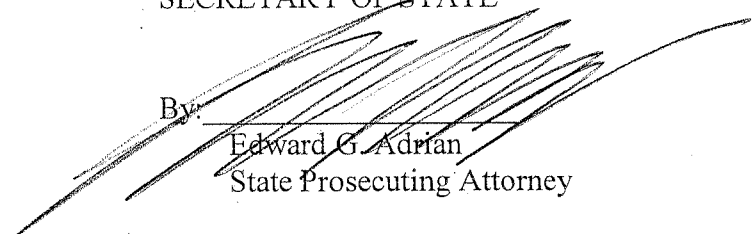
C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

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

Dated: 11/21/05

By: 

Edward G. Adrian
State Prosecuting Attorney

SUSAN MARIE MCWHINNEY
RESPONDENT

Dated: 11/10/05

By: Susan Marie McWhinney

Susan Marie McWhinney

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APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 11/8/05

By: Brooke Dingledine

Brooke Dingledine, Esq.

APPROVED AND SO ORDERED: VERMONT BOARD OF NURSING

Dated: December 12, 2005 By: Lisa Faurell
Chairperson

Date of Entry: 12/14/05

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E. Barre

STATE OF VERMONT
BOARD OF NURSING

In re: Susan McWhinney
License No. 25-6733

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Docket No. NU12-0804

SUMMARY SUSPENSION ORDER

On September 13, 2004, this case came before the Board of Nursing for a hearing on the State's request for summary suspension.

agreement of the parties

Based upon ~~the evidence presented at the hearing~~, the Board finds that ~~there is sufficient evidence to establish to the necessary degree that~~ the public health, safety, or welfare imperatively require emergency action against the Respondent's license.

Pursuant to 3 V.S.A. § 814(c), Respondent Susan McWhinney's nursing license is SUMMARILY SUSPENDED until a hearing on charges has been held and determined, or other resolution of this case.

BOARD OF NURSING

By: Susan Farrell
Chair

Dated: September 13, 2004

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 9/15/04

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

IN RE: SUSAN MARIE MCWHINNEY) DOCKET No. Nu12-0804
License No. 025-0006733)

REQUEST FOR SUMMARY SUSPENSION

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.
2. The Board of Nursing is authorized by 3 V.S.A. § 814 to summarily suspend the license of a nurse when it finds that the public health, safety or welfare imperatively requires emergency action.

Statement of Facts

3. Susan M. McWhinney (the "Respondent") of East Barre, Vermont is a licensed practical nurse holding license number 025-0006733, issued by the State of Vermont. This license was originally issued on or about October 16, 1991 and is currently set to expire January 31, 2006 .
4. At all relevant times the Respondent was practicing as a licensed practical nurse and provided home health and personal care to E.H. in Colchester, Vermont and other locations in Vermont. E.H. is 93 years old and requires assistance in her daily living.
5. On or about June, 2004 the Respondent utilized the credit card of E.H. without the permission of E.H. The Respondent charged approximately \$661.36 at several stores located in the South Burlington, Vermont area. The Respondent used the credit card to buy among other things groceries, clothes, linen and cigarettes. The Respondent did not have E.H.'s permission or authority to make the charges to the credit card.
6. On or about August 30, 2004, the Respondent admitted to Chief Investigator Ronald West that she had taken and utilized E.H.'s credit card without E.H.'s permission.
7. The Respondent has been given a citation to appear on the criminal charges of false token, 13 V.S.A. § 2002 and Exploitation of the Elderly, 33 V.S.A. §6902(7)(A) in Chittenden District Court, for September 20, 2004, in connection with the alleged events above.

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Montpelier, VT 05602

Request for Relief

8. The facts as set out above establish that in order to protect the public health, safety or welfare of the people of the State of Vermont emergency action is imperative.
9. The above acts and circumstances, alone or in combination, violate: 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); 26 V.S.A. § 1595(4) (has abused or neglected a patient or misappropriated patient property); 26 V.S.A. § 1595(5) (is unfit or incompetent to function as a nursing assistant by reason of any cause); and Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 5, Rule IV, II, A, 3; (engages in conduct of a character likely to deceive, defraud or harm the public).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing assistant license number 075-0008633 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 5th day of September, 2004.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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