

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

IN RE:

SHERRI A. MITCHELL

License No. 026.0009700

)
)
)

Docket No. 2009-240

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, Sherri A. Mitchell, 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. Sherri A. Mitchell (the "Respondent") of West Burke, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0009700. This license is currently set to expire on or about March 31, 2011.
3. At all times relevant, Respondent was employed as a Registered Nurse at St. Johnsbury Health and Rehabilitation Center (the "Facility"), located in St. Johnsbury, Vermont.
4. On or about May 18, 2009 in a Mandatory Report of Unprofessional Conduct to the Board, Director of Nursing K.L. reported that on or about May 1, 2009 at approximately 5:00 p.m., a resident was observed by an LPN to be carrying five (5) soufflé cups with medications in them, and several medications had spilled onto the floor. K.L. stated that it was determined that the medications were from Respondent's cart. The medications were scheduled for 5:00 p.m. and 8:00 p.m. administration, and some of the cups had names on them. K.L. stated the Facility was unable to determine whether Respondent's medication cart had been unlocked, or whether the medications had been on top of the cart. Some of the medications had been signed off as given. K.L. reported that the Facility was unable to determine

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

whether this resident took any of the medications, but she reportedly had no ill effects. Respondent was terminated as a result of this incident.

5. On or about June 22, 2009 in an interview with State Investigator Jamie Palmisano, K.L. stated that on the day in question, Respondent initially denied responsibility for the unsecured medications, but eventually admitted that the medications had come from her cart. However, Respondent could not explain how the resident obtained the medications.
6. On or about July 2, 2009 in an interview with Investigator Palmisano, Respondent did not deny that a resident had obtained medications from her medication cart. Respondent speculated that the resident obtained the medications when she accidentally left her medication cart unlocked while Respondent was assisting a confused resident to another wing. Respondent stated that when she returned to her medication cart approximately three (3) minutes later, she was approached by another nurse who was holding the medications the resident had obtained. Respondent took possession of those medications to check if any medications were missing from her cart, and retained most of those medications for identification purposes. After inspecting the medications, Respondent determined they had come from her cart. Respondent believes at least one of the medications taken from her medication cart by the resident was Methadone. Respondent admitted that she pre-pours medications during the administration period. Respondent stated this incident occurred because she became distracted by another resident and made a mistake.
7. A review of written statement Respondent provided the Facility on or about May 1, 2009 indicates that on the day in question, when handed the pills the resident had obtained, Respondent threw in the trash the pills that she recognized, and kept the others in her medication cart for identification purposes.
8. On or about May 1, 2009 in a written statement to the Facility, LPN B.A. stated that prior to this incident, she had seen Respondent prepare medications and place them on Respondent's medication cart in the nurse's station.
9. A review of Respondent's personnel file reveals that on or about March 31, 2004, Respondent was issued a verbal warning for failing to document an incident that occurred between two residents, and further, that Respondent failed to report this incident to the Administrator and/or the Director of Nursing, per Facility policy.

Charges

10. 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

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

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 rules governing the practice of the profession).

Understandings

11. 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.
12. 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.
13. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
14. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
15. 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.
16. 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.
17. 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** Respondent's license to practice nursing for a **MINIMUM PERIOD OF SIX (6) MONTHS** 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.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes six (6) months 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 (40) hours per week during the conditioned period.

(3) Safe Medication Administration Course.

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a safe medication administration course focusing on safe medication administration 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 sixty (60) days of the date of entry of this Stipulation and Consent Order.

(4) Administration of Medications.

Respondent is prohibited from administering any medications. This condition may be removed only after the Respondent submits written documentation of successful completion of the Safe Medication Administration Course described above in ¶A.(3) to the satisfaction of the Board or its designee.

(5) 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, Respondent 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.

(6) Reports from Employers/Program Directors.

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. All employer reports shall indicate satisfactory performance 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 her performance and attendance. This report shall be submitted in writing on forms issued by the

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Board and accompanied by a cover letter on the school's letterhead. All Program Director reports shall indicate satisfactory performance and attendance.

(7) Practice Under Supervision.

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

(8) 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.

(9) 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.

(10) 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 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.

(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 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.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

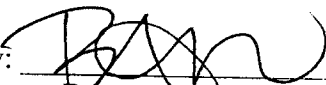
After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order.

- 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:

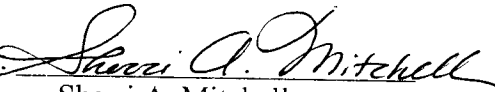
STATE OF VERMONT
SECRETARY OF STATE

Dated: 2-2-10

By: 
Betsy Ann Wrask
State Prosecuting Attorney

SHERRI A. MITCHELL
RESPONDENT

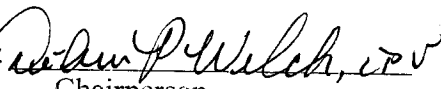
Dated: 01-27-2010

By: 
Sherri A. Mitchell

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 2-8-10

By: 
Chairperson

Date of Entry: 2/10/10
nu.mitchell.stip

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107