

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re: Andrea Nickerson }
License No. 026-00 }
Docket No. NU04-0704 }

FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER

Introduction:

On 12 March 2007, this matter came before the Vermont Board of Nursing on a petition submitted by Andrea Nickerson.

Petitioner seeks reversal of a preliminary denial of a request filed with this Board. Petitioner seeks full reinstatement of her Vermont nursing license privileges without conditions. The conditions on the Petitioner's license are the result of a "Stipulation and Consent Order" entered 1 January 2005 (the "January 2005 Order"). The January 2005 Order resulted from charges of practice mistakes for which the Petitioner took responsibility.

Board members Kenneth W. Bush, Susan O. Farrell, Chairperson, Ellen Leff, Donarae Metcalf, Sandra Norton, Linda Rice, DeAnn Welch and Alan Weiss participated in the hearing of this matter. Edward G. Adrian appeared on behalf of the State of Vermont. Board counsel Kevin F. Leahy presided.

Findings of Fact &
Conclusions of Law:

The Petitioner completed the conditional period set forth in the 2005 order and applied to have her license reinstated without conditions. A review committee of the Board preliminarily denied the request and issued a letter to the Petitioner dated 31 January 2007 ("pre-denial letter"). The reason stated for preliminarily denying the Petitioner's request, as stated in the January 2007 pre-denial letter, was concern based on a

November employer's report and a recent telephone conversation with the director of nursing indicat[ing] concerns about your ability to [practice] safely."

This appeal followed.

A Petitioner bears the burden of proof. 3 V.S.A. § 129(e). It is therefore incumbent upon the Petitioner to demonstrate to the Board that she has met the conditions set forth in the 2005 Order, which is the basis for the license condition she seeks to have removed.

The January 2005 Order conditioned the Petitioner's license for a minimum period of one (1) year and required Petitioner to complete a medication administration course. The Petitioner was also required to work under supervision and provide monthly employer reports. The Petitioner was also prohibited from taking certain types of employment. The January 2005 Order also stated that if the Petitioner violated the "terms of the order in any respect, the Board, after giving [her] notice and an opportunity to be heard, may rescind or modify [the] Order and impose additional appropriate disciplinary actions." See January 2005 Order at ¶ 12. There are no violations noted in the Petitioner's file.

The January 2005 Order further stated that, upon conclusion of the one year conditional period, Ms. Nickerson "may petition the Board to remove any and all conditions on her license;" and it required that she "present proof that she has fully complied with the terms of this Order" in order to remove the conditions. *Id.* at ¶¶ 13-14.

Ms. Nickerson's petition and the evidence presented to the Board demonstrated completion of the one-year conditional period and successful completion of the required medication course. She worked under supervision and provided monthly reports. The Petitioner also supplied the Board with an email letter of reference from Doreen M. Sheltra, RN. Deborah Golt, RN, a colleague of the Petitioner, testified regarding the overall safe practice and competence of the Petitioner in her professional work.

The Board did not receive any persuasive evidence suggesting the Petitioner's license remain under conditions. The evidence demonstrated that she met the conditions demanded of her. In fact, the pre-denial letter did not state that the Petitioner failed to meet the conditions put on her license. Rather the letter indicated concern with an "employer report," which did not indicate any specific non-compliance. Similarly, the letter expressed concern over a "phone call" with a supervisor, which offered no guidance on how the Petitioner failed to comply with the conditions set forth on her license.

The Board reviewed and considered the evidence presented at the hearing by the Petitioner and questions asked by the State. The evidence showed that the Petitioner met all conditions placed on her license by the Board. The Board considered the petition in deliberative session and voted to vacate the review committee's decision not to remove the license conditions. The Petitioner's license shall therefore be reissued without any conditions.

ORDER

The Board VACATES the 31 January 2007 review committee decision denying full reinstatement of Petitioner's license, and Petitioner Andrea Nickerson's request to have her license reinstated without conditions is GRANTED effective the date of entry of this order.

(END)

(signature page to follow)

Vermont Board of Nursing:

By: Alan H Weiss Date: 9 April 2007
Alan Weiss, for the Board of Nursing

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/11/07

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing.

A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 26 Terrace Street, Montpelier, Vermont 05609-1101 within 30 days of the entry of the order.

If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Springfield

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

IN RE:)
ANDREA H. NICKERSON) Docket No: NU 04-0704
License No. 025-0008150)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Andrea H. Nickerson, L.P.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 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); Administrative Rules of the Board of Nursing ("ARBN"); Rules of the Office of Professional Regulation.

Facts

- 2) The Respondent is a Licensed Practical Nurse under License Number 025-0008150.
- 3) Respondent was originally licensed on November 9, 2001 and Respondent's license is currently set to expire on January 31, 2006.
- 4) At all times relevant, the Respondent was employed as an L.P.N. by Mountain View Center located in Rutland, Vermont.
- 5) On or about July 2, 2004, the Respondent incorrectly gave 22 units of insulin to resident M.L., who was not a diabetic. The Respondent did not check M.L.'s wristband and she assumed M.L. was resident A.B., to whom the insulin should have been administered.
- 6) After discovering the error, the Respondent administered 22 units of insulin to resident A.B. at 1:15 p.m., although the drug was ordered to be given at 8 a.m. and A.B. was scheduled to have another 6 units given at 6 p.m. The Respondent did not call the physician prior to giving A.B. the insulin at 1:15 p.m.

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7) On or about June 24, 2004, the Respondent incorrectly gave resident R.B. one-half of the prescribed dose of Xanax. R.B.'s order was for .5 mg, however, the Respondent gave R.B. a dose of .25 mg of Xanax.

Charges

8) 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 the performance of unsafe or unacceptable patient care pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(2); and
- ii. 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to deceive, defraud or harm the public); 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

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 his 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.

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.

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ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. The Board of Nursing hereby **CONDITIONS** Respondent's license for **A MINIMUM PERIOD OF ONE (1) YEAR** commencing with the date of entry of this 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 a total 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.

(3) Medication Administration Course.

Respondent must complete (i.e.: receive a passing grade, if applicable) a course focusing on medication administration with prior approval by the Board or its designee, and then submit written documentation (certificate of completion, etc.) to verify same to the satisfaction of the Board or its designee. Respondent shall complete this course within three (3) months of the date of entry of this 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 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.

(5) Reports from Employers/Nursing School.

Within one (1) month of the date of entry of this Stipulation and Consent Order or within one (1) month of the subsequent commencement of employment, and monthly thereafter for the period the conditions are in place, Respondent shall cause

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every employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's 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.

(6) Practice Under Supervision.

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

(7) Types of Employment Prohibited.

Respondent shall not work as a supervising nurse, with the exception of 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.

(8) 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 Respondent's employment, personal address, or telephone number.

(9) Notification to Other States.

In the event that the Respondent is licensed as a nurse in any other state(s), she must inform the licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont 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.

(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.

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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.

(13) 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

Dated: 12/14/04

By: [Signature]
Edward G. Adrian
State Prosecuting Attorney

ANDREA H. NICKERSON
RESPONDENT

Dated: 12/9/04

By: [Signature]
Andrea H. Nickerson

APPROVED AND SO ORDERED: VERMONT BOARD OF NURSING

Dated: Jan. 10 2005

By: [Signature]
Chairperson

Date of Entry: 1/13/05
nu.nickerson.stip

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Prosecuting Attorney
Office of
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Montpelier, VT 05602

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

IN RE:)
ANDREA H. NICKERSON) Docket No: NU 04-0704
License No. 025-0008150)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Andrea H. Nickerson, L.P.N:

Board Authority

- 1) The Vermont State Board of Nursing ("the 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); Administrative Rules of the Board of Nursing; 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) 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).
- 4) The inability to practice nursing competently includes the performance of unsafe or unacceptable patient care pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(2).
- 5) Engaging in conduct of a character likely to deceive, defraud or harm the public is unprofessional conduct upon which the Board can base disciplinary action. 26 V.S.A. §1582(a)(7).

Facts

- 6) The Respondent is a Licensed Practical Nurse under License Number 025-0008150.
- 7) Respondent was originally licensed on November 9, 2001 and Respondent's license is currently set to expire on January 31, 2006.

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- 8) At all times relevant, the Respondent was employed as an L.P.N. by Mountain View Center located in Rutland, Vermont.
- 9) On or about July 2, 2004, the Respondent incorrectly gave 22 units of insulin to resident M.L., who was not a diabetic. The Respondent did not check M.L.'s wristband and she assumed M.L. was resident A.B., to whom the insulin should have been administered.
- 10) After discovering the error, the Respondent administered 22 units of insulin to resident A.B. at 1:15 p.m., although the drug was ordered to be given at 8 a.m. and A.B. was scheduled to have another 6 units given at 6 p.m. The Respondent did not call the physician prior to giving A.B. the insulin at 1:15 p.m.
- 11) On or about June 24, 2004, the Respondent incorrectly gave resident R.B. one-half of the prescribed dose of Xanax. R.B.'s order was for .5 mg, however, the Respondent gave R.B. a dose of .25 mg of Xanax.

Charges

12) The above 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 the performance of unsafe or unacceptable patient care pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(1), and failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(II)(B)(2); and
- ii. 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to deceive, defraud or harm the public); 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).

Relief Requested

WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 5th day of November 2004.

STATE OF VERMONT



Prosecuting Attorney
Office of
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Montpelier, VT 05602

STATE OF VERMONT
SECRETARY OF STATE

By:

Edward G. Adrian
State Prosecuting Attorney

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