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

IN RE: ELIZABETH M. NORTON License No. 025.0007391	)))	Docket No. 2008-388 (NU34-1008)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and the Respondent, Elizabeth M. Norton, LPN, 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. Elizabeth M. Norton (the "Respondent") of Charlestown, New Hampshire is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0007391. This license was originally issued on or about August 8, 1996 and is currently set to expire on or about January 31, 2010.

3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Springfield Health and Rehabilitation (the "Facility"), located in Springfield, Vermont.

4. On or about October 24, 2008 in a Report of Unprofessional Conduct, Director of Nursing Services L.R. reported that on or about August 24, 2008, a terminally ill patient's family reported that Respondent administered Ativan to the patient, crushed and placed in applesauce with a pain medication, without the consent of the patient or family. L.R. stated that the patient had made it clear that she wanted to remain alert.

5. On or about December 2, 2008 in a telephone interview with State Investigator Karl Packer, L.R. stated that earlier in the week prior to this incident, the patient was given Ativan to calm her, and it put the resident into what *her family* described as a

medicated coma. Therefore, because the patient wanted to remain lucid and alert to spend her remaining time with her family, the patient refused pain medications and Ativan. The Patient's medical records show her being lethargic at this time, no note was made on the MAR about any reaction to the prior administration. L.R. stated that the patient's two daughters, who had Dual Power of Attorney for Health Care, supported their mother's decision to refuse the medications. L.R. stated that all of the nursing staff was aware of the patient's wishes to not be administered pain medications or Ativan, and that if staff had any questions, the patient was alert and oriented, and her daughters were at her bedside and could also be asked.

6. However, in or about the early morning hours of August 25, 2008, L.R. advised that the patient agreed to take Oxycodone for her pain. L.R. advised that Respondent then crushed Oxycodone and Ativan in applesauce and gave it to the patient. After the patient finished the applesauce, Respondent told the patient's daughters (who had been at the patient's bedside), "Please don't be mad at me, girls, I just gave your mother Ativan." L.R. advised that the patient's daughters immediately reported Respondent's act of administering Ativan without the knowledge or consent of the patient or the daughters to a nursing supervisor. Moreover, L.R. advised that the patient died later that afternoon without regaining consciousness. (The medical records of the patient reveal that the patient was given several doses of morphine by the Facility's Nurse Manager after Respondent had left the facility.) L.R. stated that after the Facility conducted an internal investigation of this matter, the Respondent's employment was terminated.

7. A review of a Facility document dated September 12, 2008 regarding the internal investigation of this matter reveals that on the date in question, Respondent wrote in her Nurse's Notes that Respondent had asked the patient and her family if the patient wanted Ativan; they accepted; but later rescinded the acceptance after the Ativan was already administered.

8. A review of a Department of Health and Human Services Centers for Medicare and Medicaid Services Report (the "CMS Report") regarding this incident reveals in part the following:

   a. Respondent stated that she was aware of the patient's wishes to avoid sedation, but Respondent confirmed in an interview that she administered the Ativan without verbal consent of the patient or the patient's family because Respondent disagreed with the patient's decision to minimize medication.

   b. Respondent confirmed that she did not inform the patient or the patient's family that she was administering the Ativan prior to administration because Respondent "did not want to be stopped."

Respondent does not remember making the statements referred to in (a) and (b) above and does not believe she made them.

9. On or about December 9, 2008 in a telephone interview with Investigator Packer, R.V., one of the patient's daughters, stated that on the day in question, Respondent never asked the patient if she wanted Ativan; Respondent only asked the patient if she wanted Oxycodone, and the patient said, "Yes."

10. On or about December 15, 2008 in a telephone interview with Investigator Packer, Respondent admitted to giving the patient Ativan. However, Respondent denied certain statements that were attributed to her in the CMS Report. Respondent stated that she had non-verbal consent from the patient to take Ativan, in that the Respondent asked the patient whether she wanted Ativan and the patient nodded consent. Furthermore, the Respondent stated that she wanted to write an addendum to her Nurse's Notes stating the patient had given her non-verbal consent, but was not allowed to do so by the Facility. Later in the interview, Respondent stated that the patient was not communicative and that it is possible that the nod was for the Oxycodone and not the Ativan.

11. On or about December 23, 2008 in a telephone interview with Investigator Packer, CMS Investigator C.K. stated that the statements attributed to Respondent in the CMS Report were verbatim from Respondent. C.K. also advised that she was concerned about Respondent's statement that she is an advocate for her patients and that Respondent would take this type of action again.

12. On or about January 14, 2009 in an interview with Investigator Packer and Adult Protective Services Investigator Brian Miller, Respondent stated that she probably shouldn't have given the patient Ativan, but she was trying to do the right thing and make the patient comfortable. Respondent also confirmed that after she administered the Ativan to the patient, she told the patient's daughters, "Don't be mad at me, I just gave your mother Ativan."

Charges

13. 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:

COUNT I – PERFORMANCE OF UNACCEPTABLE PATIENT CARE AND FAILING TO CONFORM TO ESSENTIAL NURSING STANDARDS

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

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).

By giving the patient Ativan, a drug known to cause drowsiness and sedation, knowing that the patient did not want Ativan and wanted to remain alert, the Respondent performed unacceptable patient care by giving the patient Ativan without consent. By going against the wishes of the patient by giving the Ativan without consent, she violated the patient's rights and failed to conform to essential and acceptable nursing standards. The patient's daughters who both had power of attorney for health care both supported the decision of the patient to refuse the medications and the Respondent failed to conform to essential nursing standards by ignoring the wishes of the daughters. The Respondent giving the Ativan without warning the patient or the daughters engaged in unacceptable patient care and failed to conform to essential nursing standards.

By substituting her own beliefs in respect to the administration of Ativan, rather than those of the Patient or family with power of attorney, the Respondent engaged in unacceptable patient care and failed to conform to the essential standards of the nursing profession.

COUNT II – FAILING TO COMPLY WITH STATE STATUTE

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).

By violating the provisions of the State statutes as set forth in Count I above, governing the practice of the profession, the Respondent engaged in unprofessional conduct.

Understandings

14. Respondent admits the facts above are true and that the conditions below are necessary to protect the public. With regards to recitations of the content of reports, Respondent is only admitting that the reports contained the statements.

15. 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.

16. 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.

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

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

19. 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.

20. 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.

21. 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 **SUSPENDS** the Respondent's license to practice nursing for a **MINIMUM OF SIX (6) MONTHS from the date of entry below.** Before applying for reinstatement, Respondent must successfully complete (i.e., receive a passing grade, if applicable) the following three (3) courses 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: 1) an ethics course focusing on patient rights; 2) a documentation course; and 3) a course on caring for the terminally ill. The Respondent's license shall not be reinstated until these prerequisites are met, regardless of whether more than six (6) months have passed since the suspension went into effect. Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF ONE (1) YEAR.** The conditions will be 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 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 (40) hours per week during the conditioned period.

(3) 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.

(4) Reports from Employers/Program Directors.

Within one (1) month of the date of reinstatement 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 performance and attendance during that month. 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 Board and accompanied by a cover letter on the school's letterhead. All Program Director reports shall indicate satisfactory performance and attendance.

(5) 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.

(6) 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 during the effective period of this Consent Order.

Board declines to adopt →

[Respondent reserves the right to argue to the Board, either in person or via her legal counsel, against the inclusion of "temporary nursing employment agency" prohibition because of the difficulty this will present in obtaining employment in her geographical area where there is not a shortage of LPNs seeking employment.]

(7) 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. It is understood that the Board routinely delegates the approval process to an officer who responds promptly to requests.

Board declines to adopt →

[Respondent reserves the right to argue for an alternative to the above paragraph which would read as follows:

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first notify the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive approval for practicing of 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. It being understood that the Board routinely delegates the approval process to an officer who responds to promptly to requests.]

(8) 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.

(9) 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.

(10) Costs.

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

(11) 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.

(12) 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:

Dated: 11/6/09

STATE OF VERMONT
SECRETARY OF STATE

By: _____
Edward G. Adrian
State Prosecuting Attorney

ELIZABETH M. NORTON
RESPONDENT

Dated: 11/2/09

By: Elizabeth M. Norton
Elizabeth M. Norton

APPROVED AS TO FORM:

Dated: 11/2/09

ATTORNEY FOR RESPONDENT

By: _____
George T. McNaughton, Esq.

APPROVED AND SO ORDERED:

Dated: 11-9-09

VERMONT BOARD OF NURSING

By: _____
Chairperson

Date of Entry: 11/10/09

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