

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

IN RE:)
LORI JEAN OBRIAN) Docket No. 2011-9 (NU)
License No. 026.0019689)

STIPUATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Lori Jean O'Brian, 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.

Stipulated Facts

2. Lori Jean O'Brian (the "Respondent") of Alburgh, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0019689. This license was originally issued on or about August 29, 1990 and expires on or about March 31, 2013.
3. At all times relevant, Respondent was employed as a Registered Nurse at Fletcher Allen Health Care St. Albans Clinic (the "facility"), located in St. Albans, Vermont.
4. On or about December 20, 2010 the Office of Professional Regulation received a Mandatory Report of Unprofessional Conduct alleging that the Respondent had been terminated because of poor performance and the concern that she was not able to practice competently.
5. On or about March 2, 2011, in an interview with Investigator Pezzulo, F.O., who is the Practice Supervisor for the facility, stated he had been supervising the Respondent during her ninety (90) day probationary period and that he had been concerned about Respondent's behavior because he had received complaints from other staff who had noticed that the Respondent was not proficient or able to grasp general nursing duties nor was the Respondent able to work on her own. Additionally, staff had complained to F.O. that the Respondent was forgetful and lacked concentration. F.O.

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stated that, on or about December 16, 2010, he confronted the Respondent about his concerns about her behavior and she "opened up". The Respondent informed F.O. that she has been depressed.

6. On or about February 25, 2011, in an interview with State Investigator Laura Pezzulo, W.B., who is the Human Resource Specialist for the Facility, stated that on or about December 16, 2010 she had a meeting with the Respondent, F.O., and S.D., who is a Staff Nurse in Dialysis who sat with the Respondent in absence of a union steward. W.B. stated that in this meeting the following was revealed:
 - a. W.B. stated that the Respondent was very unfocused and hard to understand. W.B. had to prompt her many times for the Respondent to remember what she had just said.
 - b. During the meeting F.O. stated that he had pulled the Respondent from the unit floor because she had odd behavior.
7. On or about March 3, 2011, in an interview with Investigator Pezzulo, J.J., who the Surgical/Clinical Office Assistant, stated that she observed the Respondent being lethargic, having difficult concentrating, and having "dry mouth."
8. On or about March 3, 2011, in an interview with Investigator Pezzulo, Registered Nurse D.M-P. stated that she worked the Respondent as her preceptor and that she had noticed that the Respondent would easily get distracted and did not focus well. D.M-P. stated that she would frequently have to repeat herself for the Respondent to understand what she was saying and frequently the Respondent would forget how to do routine procedures. D.M-P. stated that on occasion she observed the Respondent take a pill directly out of her pocket and take it while she was working. D.M-P. stated that this was odd because the Respondent did not take it out of a bottle and the Respondent stated it was Klonopin for her anxiety. D.M-P. further stated that within a half hour of the Respondent ingesting the pill she observed the Respondent to be "almost euphoric." The Respondent states she generally would keep Advil in her pocket while at work to treat her chronic eye pain. The Respondent did take half a Klonopin while at work on one occasion but does not recall if this is the same instance that D.M-P. observed.
9. On or about March 3, 2011, in an interview with Investigator Pezzulo, Dr. A.E. stated that he had noticed the Respondent to be "phased out" and she seemed forgetful. Additionally, Dr. A.E. stated that the Respondent had problems with her performance at work.
10. On or about March 4, 2011, in an interview with Investigator Pezzulo, A.J. stated she worked at the facility to help the clinic transition while PRISM went live. A.J. stated prior to working there she did not know the Respondent and worked at the facility for a total of approximately 7 hours over the course of two or three separate days. A.J. stated that she observed the Respondent having difficulty "registering" anything and

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the A.J. had to continually repeat herself. A.J. stated that at one point she asked the Respondent if she could see the screen well and the Respondent told her to "shut up" and to stop mentioning the Respondent's eye problems. A.J. reported to Investigator Pezzulo that in her opinion the Respondent "did not seem mentally stable" and described her speech as "impaired." A.J. stated that she reported her concerns to F.O.

11. On or about March 15, 2011, in a second interview with Investigator Pezzulo, the Respondent denied ever taking medication at work with the exception of taking half of a Klonopin because she was "so rattled" in December of 2010.
12. Prior to entering into this Stipulation and Consent Order the Respondent was obtained an Independent Evaluation from a licensed professional specializing in drug and alcohol abuse who was pre-approved by the Board. The Independent Evaluator, Luanne Sberna, stated the Respondent does not have a substance abuse problem but does suffer from anxiety.
13. Respondent has committed unprofessional conduct because when the Respondent took Klonopin while at work and practiced at time when her physical and emotional condition prevented her from concentrating effectively at work she failed to comply with the rules governing the profession; she did not conform to essential standards of suitable care, and she preformed unsafe patient care.

Violations

14. 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. 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 pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(1); and failing 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); and
 - 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).

Understandings

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15. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove these charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary to protect the public.
16. 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.
17. 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.
18. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
19. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
20. 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.
21. 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.
22. 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 OF ONE (1) YEAR** from the date of entry below. The conditions will be as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time of 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

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minimum of one (1) year of supervised nursing 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. Respondent shall be prohibited from working more than forty (40) hours per week.

(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 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 submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program which has a clinical portion that 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 submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

(4) Reports from Employers/Program Director.

Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and monthly thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. Moreover, on a quarterly basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) 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. These reports shall be submitted in writing on forms issued by the Board. All nursing program reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

(5) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has on site supervision for the entire shift by a registered nurse that is in good standing with the Board.

(6) Medical Treatment Provider Reports.

The Respondent shall require her both Treating Professional and her Primary Care Physician to submit a total of (3) reports to the Board which must outline the Respondent's current treatment plan and the Respondent's current proscribed medications. The first report must be submitted to the Board within forty-five (45) days of the date of entry of this Order.

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The second report must be submitted after the Respondent has been on a Conditional Status for six (6) months. The third report must be submitted prior to the Respondent's conditional period conclusion. These reports shall indicate that the Respondent is complying with the recommendations of her Treating Professional and her Primary Care Physician.

(7) 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.

(8) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(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.

If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

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

Within ten (10) 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 (including resignation or termination), personal address, or telephone number.

(11) Notification to Other States.

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

(12) 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 as a nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

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(13) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the Office of Professional Regulation investigators and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that her treatment provider may require her to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(14) Costs.

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

(15) 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.

(16) 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.

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AGREED TO:

Dated: 11/7/11

STATE OF VERMONT
SECRETARY OF STATE

By: S. Lauren Hibbert

S. Lauren Hibbert
State Prosecuting Attorney

LORI JEAN O'BRIAN
RESPONDENT

By: Lori O'Brian

Lori Jean O'Brian

APPROVED AS TO FORM:

Dated: 11/4/11

ATTORNEY FOR RESPONDENT

By: Richard Cassidy, Esq.

Richard Cassidy, Esq.

APPROVED AND SO ORDERED:

Dated: 11-14-11

VERMONT BOARD OF NURSING

By: Ellen Reff

Chairperson

Date of Entry: 11/16/11

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