

OFFICE OF PROFESSIONAL REGULATION
VERMONT STATE BOARD OF NURSING

IN RE: Arianna O'Byrne)
 Case File No. NU17-0998) DEFAULT ORDER
 License No. 26-21088)

Introduction

The Board of Nursing held a default hearing in the above matter on August 14, 2000 at 81 River Street in Montpelier, Vermont. Board members Linda Rice, Diane Dowgiewicz, Susan Farrell, Larry Kingsbury, Louise Hamilton, Susan Cota, Pat Rock and Raymond Phillips participated in the decision. Assistant Attorney General William Ahlers appeared for the State. The Respondent Arianna O'Byrne was present.

The Respondent does not contest the Charges and does not wish to file an Answer. The Board took official notice of its own files in making the default determination.

Findings of Fact

1. The Respondent was sent notice of the Charges against her by certified mail on June 1, 2000 to her last known address.
2. The return receipt came back to the Office of Professional Regulation bearing the signature of the Respondent.
3. Respondent was also sent notice of the default hearing to the same address by certified mail, which she signed for.
4. Respondent has not answered the charges against her.
5. Upon hearing the State's presentation and taking notice of its own file, the Board found the Respondent to be in default. The allegations contained in the State's specification of charges dated May 24, 2000 (copy attached) are therefore treated as the facts on which the Board's order is based.
6. The Respondent admits to administering a controlled substance while under a conditioned license that prohibits her from doing so.

Conclusions of Law

The Respondent has received adequate notice of the charges against her as indicated by the Board's file and the State's presentation. Because the Respondent has failed to answer the charges against her, the State's factual allegations are treated as if proved. Accordingly, the Board finds, in the default hearing held pursuant to 3 V.S.A. §809(d), that the Respondent has engaged in the unprofessional conduct alleged in the State's specification of charges.

Order

In accordance with the above findings of fact and conclusions of law, the license of the Respondent is hereby **SUSPENDED** for a period of **TWO WEEKS (14 days)**, and thereafter will be reinstated labeled **CONDITIONED**.

The **CONDITIONS** on Respondent's license shall be identical to those found in her original Stipulation and Consent Order approved by the Board and entered on July 9, 1999, which is incorporated by reference. The length of the conditioned period of **THREE YEARS** of supervised nursing practice will start over, beginning with the first day of reinstatement after the Respondent's two week suspension has been served. The suspension is effective as of the date of entry of this Order, below.

Appeal Rights

This is a final administrative determination by the Vermont State Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By:

Susan Farrell
Susan Farrell
Chair

Date:

Aug. 18, 2000

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY:

8/30/00

STATE OF VERMONT
BOARD OF NURSING

In re:)
Arrianna O'Byrne, RN) Docket No. NU17-0998
Lic. No. 26-21088)

SPECIFICATION OF CHARGES

1. The Board of Nursing has jurisdiction to investigate complaints of unprofessional conduct and to conduct hearings pursuant to 3 V.S.A. §129, and 26 V.S.A. §§1574, 1582.

2. Respondent Arrianna O' Byrne is licensed by the State of Vermont as a registered nurse. She holds license No. 26-21088.

3. On or about March 27, 2000, Respondent administered medication to a patient at the Vermont State Hospital. This was pursuant to a valid doctor's order but was not an emergency situation. The medication was IM injection of Benadryl 50 mg. and Doperidol 5 mg. IM.

4. Respondent's license is currently conditioned to prohibit her from administering medications. Respondent has not been granted a modification to that order as entered on 7/9/99. (A copy of that order is attached hereto and made a part hereof as Attachment A.) See specifically Paragraph A. (2) of the Order.

5. Respondent sought to have her supervising nurse sign that she, the supervisor, had administered the medications but the supervising nurse refused to do so.

6. By the conduct described above Respondent has committed unprofessional conduct by violating the terms of her conditional license, Paragraph A.(22)., and T3V.S.A. §129a (a)(4) failure to comply with a condition of license

restricted by the Board. Additionally, this is unprofessional pursuant to 3V.S.A.

§129a (a)(7)(willfully attempting to make or file a false report).

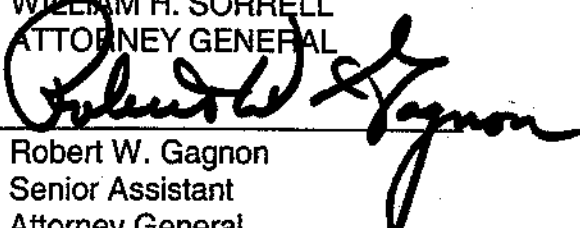
WHEREFORE the nursing license of Arrianna O'Byrne, RN should be
revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

Dated at Montpelier, Vermont this 24th day of May 2000.

STATE OF VERMONT

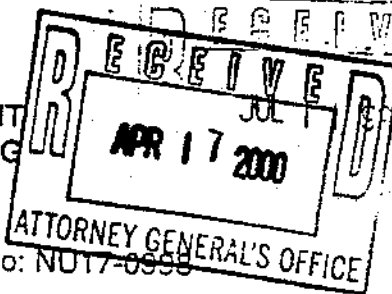
WILLIAM H. SORRELL
ATTORNEY GENERAL

by:


Robert W. Gagnon
Senior Assistant
Attorney General

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

STATE OF VERMONT
BOARD OF NURSING



IN RE:

Arrianna O'Byrne
License Number 26-21088

Docket No: ND17-0958

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, through Attorney General William H. Sorrell, and Respondent Arrianna O'Byrne who stipulate and agree as follows:

1. The Board of Nursing has jurisdiction to investigate complaints of unprofessional conduct and approve consent orders pursuant to 3 V.S.A. §129, and 26 V.S.A. §§1574, 1582.
2. Respondent is a registered nurse licensed by the State of Vermont holding license number 26-21088.
3. Respondent entered a Stipulation and Consent Order with the State on January 13, 1999, and based on that stipulation was suspended by the Board of Nursing for a period of three (3) months.
4. Respondent has petitioned the Board to lift the suspension.
5. The State does not oppose Respondent's petition and the parties have agreed this Stipulation and Consent Order would be an appropriate resolution to the petition.
6. 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.

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

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

9. Respondent voluntarily enters this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.

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

11. 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 hereby lifts the suspension of Respondent's license and **CONDITIONS** Respondent's license to practice nursing for a minimum period of three (3) years. The **CONDITIONS** on Respondent's license are as follows:

(1) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed three (3) years of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks in nursing. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

(2) Administration of Medications.

Respondent's license is conditioned to prohibit her from administering any medications for a period of three (3) months. This condition may

be removed only by Respondent petitioning the Board for its removal no sooner than three (3) months (during which time she works at least 40 hours every two weeks in nursing) from the date of entry of this Consent Order or the date she returns to work as a nurse, whichever is later. In petitioning the Board, Respondent agrees that she must demonstrate, to the satisfaction of the Nursing Board, that she can safely and competently administer medications. Such proof shall include appropriate support from her treating professional and employer or nursing school administrator.

The removal of the prohibition against administering medications shall not result in automatic reinstatement of all medication privileges. Rather, the Board may gradually restore those privileges through the following intermediary steps: (1) permission to administer non-narcotic medications under supervision while the prohibition on administering narcotic medications remains in place; and (2) full permission to administer non-narcotic medications along with permission to administer narcotic medications only under supervision.

(3) Approval of Changes of Treating Professional.

Respondent shall obtain prior approval from the Board of all changes of treating professional. Failure to obtain prior approval of a change of treating professional may be grounds for a charge of violation of this Consent Order.

(4) Completion of Counseling and Treatment Plan.

Respondent shall enter into and continue counseling with the 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 comply with the treatment plan approved by the Board.

(5) Substance Abuse Therapy and 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.

(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 and shall be accompanied by a cover letter on the treating professional's professional letterhead. The first report is due commencing the month after the date of entry of this Consent Order and subsequent reports are due every month thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period this Consent Order is in effect.

(7) Participation in NA/AA.

Respondent shall participate, at least three times weekly, or as recommended by her treating professional, in Alcoholics Anonymous or Narcotics Anonymous meetings.

(8) Random Drug Testing.

Respondent shall submit to random drug and alcohol screening at the request of the Board. Respondent shall ensure that Respondent's treating professional or employer or both shall administer random alcohol or drug tests as required by the Board or its designee. All testing shall be done on a random, unannounced basis, and analyzed by a lab qualified to analyze samples for forensic purposes. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative except for drugs prescribed for her under the care of a physician, dentist, or nurse practitioner. (See paragraph D. (10) Drug Use Exception).

(9) Abstain from Alcohol or Drug Use.

Respondent shall abstain completely from the consumption of alcohol or the use or possession of any drugs with the exception of prescribed medications as outlined in paragraph A. (10).

(10) Drug Use Exception.

Respondent may take medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's chemical dependency within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued need for prescribed medications. Respondent shall keep a written record of medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(11) Interview with the Board or its designee.

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

(12) Re-issue of License.

Upon the lifting of the suspension and imposition of these conditions, Respondent shall be re-issued a license labeled "conditioned".

(13) 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.

(14) 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 nursing employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in nursing employment, personal address, or telephone number.

(15) 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 she practices as a nurse and inform them of her conditional license status. Within ten (10) days of the date of entry of this Consent Order or of any subsequent employment, Respondent shall cause her 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, 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 the conditions in the Consent Order during clinical experience.

(16) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Consent Order and every month thereafter, Respondent shall cause every employer she 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 and accompanied by a cover letter on the employer's letterhead.

In the event the Respondent attends nursing school, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's 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. In the event Respondent is not employed in nursing or attending school

during any month or portion thereof, Respondent shall submit to the Board, in writing, a self-report describing other employment or activities.

Respondent shall authorize her employer and her nursing school administrator to provide all information requested by the Nursing Board, or its designee, either orally or in writing, at any time during the period the Consent Order is in effect.

(17) Practice Under Supervision.

Respondent shall practice only in a setting where she has on-site supervision for the entire shift by a registered nurse in good standing with the Vermont Board of Nursing.

(18) Prohibited Duties.

Respondent shall not work as a Charge Nurse.

(19) Types of Employment Prohibited.

Respondent shall not work for a nurse registry, travelling nurse agency, float-pool, home health care agency, temporary employment agency or as a personal care provider during the effective period of this Consent Order.

(20) Prohibited Hours of Work.

Respondent shall work only the day or evening shift during the effective period of this Consent Order. Respondent shall not work the night shift during the effective period of this Consent Order unless her employer certifies that a R. N. is present throughout the shift.

(21) License Renewal.

In the event Respondent's license is scheduled to expire during the period this Consent Order is in effect, Respondent shall apply for renewal of the

license, pay the applicable fee, and otherwise maintain qualifications to practice nursing in the State of Vermont.

(22) Release of Information Forms.

Upon the establishment of all practitioner/patient relationships with (1) treating professionals for substance abuse treatment, and with (2) treating professionals who prescribe any medication to Respondent, Respondent shall execute all release of information forms which are necessary to authorize those practitioners to release information described in this Consent Order to the Board of Nursing, its investigators, and the Attorney General's Office. All information disclosed to the Board shall be made available to its investigators and the Attorney General's Office. Respondent shall specifically execute a consent to disclosure form which meets the requirements of 42 C.F.R. §2.31 to permit disclosure of all information regarding respondent's substance abuse treatment to the Nursing Board, its investigators, and the Attorney General's Office. Any revocation by Respondent of such a consent to disclosure during the term of this Consent Order shall be considered a violation of this Consent Order.

(23) Costs.

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

(24) Violation of the Consent Order.

If Respondent violates the terms of this Consent Order in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke the terms of the conditional license and take further disciplinary action. If a complaint or charges are filed against Respondent during the term of this

Consent Order, the conditional license period shall be extended until the matter is final.

(25) Reevaluation of Conditions.

In the event Respondent does not work in nursing within three (3) years of the date of entry of this Consent Order, Respondent may appear before the Board for reevaluation of the conditions of this Consent Order.

(26) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on her license and after formal review by the Board, Respondent's nursing license may be fully restored by appropriate Board action. Respondent, however, must present proof of successful substance abuse rehabilitation and demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the practice of nursing and that she can safely and competently perform the duties of a registered nurse. Such proof shall include appropriate support from her treating professional and employer or nursing school administrator. Furthermore, Respondent shall demonstrate, to the Board's satisfaction, that she fully complied with all the terms of this Consent Order.

B. Notwithstanding any provision above, Respondent must meet all Nursing Board requirements for 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)(7).

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.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

Dated:

June 11, 1999

by:

Robert W. Gagnon
Robert W. Gagnon
Senior Assistant Attorney General

ARRIANNA O'BYRNE
RESPONDENT

Dated: 06 June 99

by:

Arrianna O'Byrne
Arrianna O'Byrne

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated:

June 30, 1999

by:

Susan A. Farrell
Chairperson

Date of entry:

7-9-99