

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

IN RE:

**AUDRA JEAN PITTS
License No. 026.0033373**

)
)
)

Docket No. 2009-308

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, Audra Jean Pitts, 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. Audra Jean Pitts, formerly Audra Maly (the "Respondent"), of Proctorsville, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0033373. This license was originally issued on or about June 28, 2006 and is currently set to expire on or about March 31, 2011. Respondent has also been licensed by the State of Vermont as a Licensed Nursing Assistant under license number 075.0004918. Respondent's LNA license was originally issued on or about June 17, 1994 and expired on or about January 31, 2003.
3. By way of history, on or about June 25, 1997 pursuant to a Default Order, Respondent's LNA license was suspended. Attachment A. This discipline was due in part to allegations that Respondent had documented making patient visits that she did not actually make, and documented providing patient care that she did not actually provide. Attachment A.
4. By way of further history, on or about November 7, 2001 pursuant to a Stipulation and Consent Order, Respondent's LNA license was reinstated with conditions for three (3) years. Attachment B.

STATE OF VERMONT



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

5. By way of further history, on or about January 24, 2003, Respondent's LNA license was suspended by the Board, with an additional three (3) years of conditions ordered to be imposed upon reinstatement. Attachment C. This discipline was due in part to Respondent's conduct in caring for a patient while under a conditioned license. Attachment C. Respondent never had her LNA license reinstated after this suspension.
6. At all times relevant, Respondent was employed as a Registered Nurse at McGirr's Nursing Home (the "Facility"), located in Bellows Falls, Vermont. Respondent was the Director of Nursing at the Facility.
7. On or about November 30, 2008, the licenses of seven (7) Facility LNAs – L.E.; S.M.; Tm.L.; M.M.; H.F.; A.C.; and Tn.L. – lapsed.
8. After their licenses lapsed, these LNAs worked in that capacity at the Facility for the following number of days with inactive licenses: L.E., two (2) days; S.M., five (5) days; Tm.L., seven (7) days; M.M., three (3) days; H.F., six (6) days; A.C., eight (8) days; and Tn.L., two (2) days.
9. On or about January 4, 2010 in an email to State Investigator Steve Kennedy, Respondent stated that the Facility's bookkeeper who tracked licensure left the Facility prior to the LNAs' licenses lapsing. Respondent advised that it was not until on or about December 10, 2008 that Respondent checked employee licensure statuses and discovered that there were LNAs without active licenses that were scheduled to work at the Facility. Respondent advised that at that point, she directed the LNAs who still did not have active licenses to renew their licenses with the Board.
10. Respondent, as Facility Director of Nursing, had a duty to ensure that all Facility LNAs were actively licensed in order to work at the Facility, and by failing to do so, Respondent has violated 3 V.S.A. § 129a(b)(1) and (2).

Charges

11. 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 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).

STATE OF VERMONT



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

Understandings

12. 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.
13. 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.
14. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
15. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
16. 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.
17. 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.
18. 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 **WARNS** Respondent's license to practice registered nursing.
- B. Notwithstanding any provision above, the Respondent must continue to meet all OPR 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

STATE OF VERMONT



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

Dated: 10-29-10

By: Betsy Ann Wrask
Betsy Ann Wrask
State Prosecuting Attorney

AUDRA JEAN PITTS
RESPONDENT

Dated: 10/19/10

By: Audra Jean Pitts
Audra Jean Pitts

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 10/26/10

By: Peter B. Joslin, Esq.
Peter B. Joslin, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 11-8-10

By: Ellen Ruff
Chairperson

Date of Entry: 11/9/10
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STATE OF VERMONT



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

STATE OF VERMONT
SECRETARY OF STATE, OFFICE OF PROFESSIONAL REGULATION

Board: Nursing
In re: Audra Maly

Case File No. NA26-0296

DEFAULT ORDER

INTRODUCTION AND FINDINGS OF FACT

The Board of Nursing held a hearing in this case on June 9, 1997, at 133 State Street in Montpelier. Diane Zamos appeared for the Attorney General. The Respondent, Audra Maly did not appear and was not represented.

The Attorney General filed a Request for Entry of Default and Motion for Default Judgment dated May 7, 1997. Despite having received timely notice of the Specification of Charges and the May 7, 1997 Pre-Hearing Conference on March 21, 1997; and the June 9, 1997 hearing on May 19, 1997, Respondent failed to answer the Specification of Charges and failed to appear at either hearing. For these reasons, the allegations of the Specification of Charges (copy attached) dated February 13, 1997, are therefore treated as the facts on which the Board's Order is based.

CONCLUSIONS OF LAW

A. Based upon the facts contained in the Specification of Charges, Respondent's actions constitute unprofessional conduct as set forth in the Specification of Charges and pursuant to 26 V.S.A. §1595(4) & (5).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED by the Board of Nursing that Respondent's nursing assistant license is SUSPENDED.

BOARD OF NURSING

by: Brenda B. Smith
Hearing Panel Chair

Dated: 6/23/97

Date of Entry: 6-25-97

Attachment A

STATE OF VERMONT
BOARD OF NURSING

In re: Audra Maly)
License No. 75-4918)

Docket No. NA26-0296

SPECIFICATIONS OF CHARGES

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

2. Respondent, Audra Maly, has been licensed as a nursing assistant by the State of Vermont with license number 75-4918.

3. On February 15, 1996, an investigation was opened based upon a mandatory report filed by Ginny Wood, the Director of Personnel for the Vermont-New Hampshire Nursing Alliance of White River Junction, Vermont.

4. On or about January 8, 1996, Respondent had documented that she had made a patient visit to an elderly man (M.P.) that in fact had not occurred. She also documented patient care was given when in fact it had not taken place.

5. On or about January 8, 1996, Respondent had documented that she had provided patient care to an elderly woman (Mrs. P.) when in fact she had neither been to the home to make such a visit nor had she performed the services she had claimed in the documentation.

6. By engaging in the above described conduct, Respondent has effectively abandoned her client/patients and this demonstrates unprofessional conduct. 26 V.S.A. §1594(4)(neglect of patient).

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ATTORNEY
GENERAL
Montpelier,
Vermont 05609

7. By engaging in the above described conduct, Respondent has demonstrated that she is unfit to function as a nursing assistant by reason of any cause, as set forth in 26 V.S.A §1595(5).

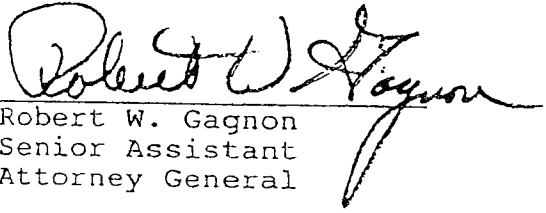
WHEREFORE, the license of Audra Maly should be revoked, suspended, or otherwise conditioned.

Dated: February 13, 1997.

STATE OF VERMONT

J. WALLACE MALLEY, JR.
ACTING ATTORNEY GENERAL

by:


Robert W. Gagnon
Senior Assistant
Attorney General

Office of the
ATTORNEY
GENERAL
Montpelier,
Vermont 05609

STATE OF VERMONT
BOARD OF NURSING

In re: Audra Maly
License No. 75-4918

)
)
Docket No. NA26-0296

STIPULATION

1. The Board of Nursing has jurisdiction to investigate complaints of unprofessional conduct and conduct hearings pursuant to 3 V.S.A. §129 and 26 V.S.A. §§1574 and 1582.
2. Respondent, Audra Maly, has been licensed as a nursing assistant by the State of Vermont with license number 75-4918.
3. Respondent was charged with unprofessional conduct on 2/13/97. Respondent failed to answer those charges and was found in default and suspended by order dated 6/25/97.
4. Respondent now petitions the Nursing Board for reinstatement. The State does not oppose that request as long as the conditions noted below are met.
5. 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.
6. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
7. 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.
8. Respondent voluntarily waives the right to a contested hearing before

Attachment B

the Board of Nursing on the Specification of Charges.

9. Respondent agrees that the Board may enter the order set forth below.

ORDER

Based on the stipulation above it is ORDERED AND ADJUDGED as follows:

A. The Board of Nursing hereby **reinstates** the license of Audra Maly subject to the following conditions:

(1) Length of Time Conditions Imposed.

These conditions shall remain in place until respondent has completed three (3) years of supervised nursing assistant 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) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Stipulation and 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.

(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 she practices as a nurse

and inform them of her conditional license status. Within ten (10) days of the date of entry of this Stipulation and Consent Order or of any subsequent employment, Respondent shall cause her immediate supervisor(s) to write to the Board, on the employer's letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with its conditions. In the event Respondent is attending a nursing program, 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.

(4) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Stipulation and Consent Order and every month thereafter for both years the conditions are in place, 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, she 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. In the event Respondent is not

employed in nursing or attending school during any month or portion thereof, she shall submit to the Board, in writing, a self-report describing other employment or activities.

(5) Practice Under Supervision.

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

(6) Prohibited Practice

Respondent shall not work for a home health agency or in any other setting where she does not have actual on site supervision for the entire shift.

(7) Violation of the Stipulation and Consent Order.

If Respondent violates the terms of this Stipulation and Consent Order in any respect, the Board, after giving her 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 Stipulation and Consent Order, the conditional license period shall be extended until the matter is final.

(8) Reevaluation of Conditions.

In the event Respondent does not work in nursing within two (2) years of the date of entry of this Stipulation and Consent Order, she may appear before the Board for reevaluation of the conditions of this Stipulation and Consent Order.

(9) Re-issue of License.

Within five (5) days of the date of entry of this Stipulation and Consent Order, Respondent shall submit her license to the Board of Nursing for a re-issued license labeled "conditioned".

(10) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, it must be first approved by 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 Stipulation and Consent Order.

(11) 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, her nursing license may be fully restored by appropriate Board action. Respondent shall demonstrate, to the Board's satisfaction, that she fully complied with all the terms of this Stipulation and Consent Order.

Notwithstanding any provision above, Respondent must meet all Nursing Board requirements for license renewal and license reinstatement.

B. By signing this Stipulation and Consent Order, Respondent authorizes her employer and 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 this Stipulation and Consent Order is in effect.

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)(8).

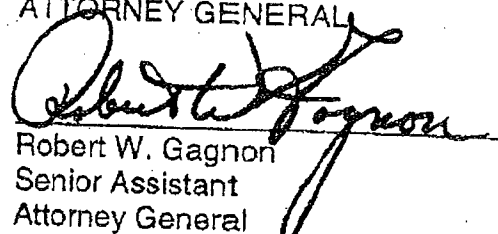
D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

Dated: 10/29/01

by:

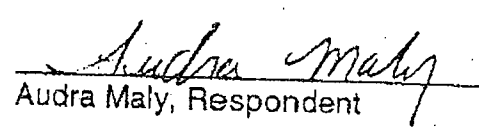

Robert W. Gagnon
Senior Assistant
Attorney General

~~Date of entry:~~ _____

AUDRA MALY

Dated: 10/20/01

by:

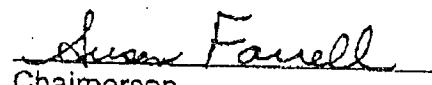

Audra Maly, Respondent

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 11.5.01

by:


Chairperson

Entered: 11/7/01

STATE OF VERMONT
BOARD OF NURSING

IN RE:

Audra Maly
License No. 75-4918

)
) Case File No. NA49-0302
)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, January 13, 2003, at 81 River Street in Montpelier, Vermont. Board members Alan Weiss, Laurey Tyo, Sandra Norton, Sue Cota, De-Ann Welch, Susan Farrell and Linda Rice participated in the decision. Robert Gagnon, Senior Assistant Attorney General, appeared for the State. Audra Maly ("the Respondent") was present. Chris Winters was the Presiding Officer.

Findings of Fact

1. Audra Maly is a nursing assistant who holds license number 75-4918 issued by the State of Vermont.
2. Respondent, at all times relevant, was employed by Cedar Hill Continuing Care Home of Windsor, Vermont.
3. On or about March 1, 2002, the Respondent was caring for resident J.A.
4. J.A.'s care plan indicates a gait belt must be used during transfers.
5. The Respondent, on the night in question, moved J.A. from her bed to the toilet.
6. It is not clear whether or not J.A. was wearing a gait belt or non-slip socks or shoes.
7. J.A. fell off the toilet while under the Respondent's care.
8. J.A. suffered a large contusion and laceration as a result of the fall.
9. The Respondent was trying to ask for help with the patient when she fell.

10. There was a call light in the bathroom next to the toilet.
11. At the time of the incident, the Respondent was working under a conditioned license due to previous discipline by the Board.

Conclusions of Law

- A. Pursuant to 26 V.S.A. § 1598 and 3 V.S.A. § 129, The Board of Nursing may revoke, suspend, discipline or otherwise condition the license of a nursing assistant who engages in unprofessional conduct as defined by 26 V.S.A. § 1595 and 3 V.S.A. § 129a.
- B. The Respondent, by allowing J.A. to fall off the toilet while under her care has exhibited an inability to practice nursing competently by reason of any cause pursuant to 26 V.S.A. § 1595(5). Such conduct constitutes unacceptable patient care and a failure to conform to the essential standards of acceptable and prevailing nursing practice in violation of Board Administrative Rules, Chapter 5, Rule (IV)(B)(1)(a) (performing unsafe or unacceptable patient care) and Chapter 5, Rule (IV)(B)(1)(b) (failing to conform to the essential standards of acceptable and prevailing nursing care).
- C. Additionally, such conduct is a violation of the terms of her stipulation and consent order and is thus unprofessional conduct pursuant to 3 V.S.A. § 129a(a)(4).

Order

A. In light of the above findings and conclusions, the Board hereby SUSPENDS Respondent's license for THREE (3) MONTHS, effective as of the date of entry of this Order.

B. Additionally, the Board further CONDITIONS the Respondent's license for THREE (3) YEARS. The CONDITIONS on Respondent's license is as follows:

- (1) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed thirty six (36) months of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks as a licensed nursing assistant in nursing [Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis].

- (2) Re-issue of License.

Within five (5) days of the date of entry of this Order, Respondent shall submit her

license to the Board of Nursing for a re-issued license labeled "conditioned".

(3) 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 notify the Board before beginning such practice. If Respondent fails to notify the Board before, none of the time spent in out-of-state practice will be credited toward the fulfillment of the terms and conditions of this Order.

(4) 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 nursing employment (if he is employed as a nurse), 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.

(5) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Order to all employers in any current or future setting in which she practices as a nursing assistant and inform them of her conditional license status. Within ten (10) days of the date of entry of this Order or of any such subsequent employment, Respondent shall cause her immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and the ability to comply with the conditions in the Order. In the event Respondent is attending a nursing program, Respondent shall provide a copy of the Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

(6) Reports from Employers/Nursing School

Within one (1) month of the date of entry of this Order and every month thereafter, Respondent shall cause every employer for which she has been employed as a nursing assistant during that 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 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.

Respondent shall authorize her employer or 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 Order is in effect.

(7) Practice Under Supervision.

Respondent shall practice only in a setting where he has on-site supervision for the entire shift by a nurse in good standing with the Vermont Board of Nursing, or is in good standing in all states that nurse is licensed.

(8) Prohibited Practice.

Respondent shall not work for a home health care agency or any other setting where she does not have actual on site supervision for the entire shift.

(9) Costs.

Respondent shall bear all costs of complying with this Order.

(12) Violation of the Order

If Respondent violates the terms of this 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 Order, the conditional license period shall be extended until the matter is final.

(13) 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 assistant license may be fully restored by appropriate Board action. Furthermore, Respondent must demonstrate, to the Board's satisfaction, that she can safely return to unrestricted practice and has fully complied with all the terms of this Order.

C. This 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 Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

Appeal Rights

This is a final administrative determination by the Vermont 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, R.N.
Chair

Date: January 18, 2003.

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 1/24/03