

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

IN RE:)
CHARLES WESLEY RISING) Docket No: NU 48-0205
License No. 025-0004676)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Charles Wesley Rising, 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 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) and 129a; 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.

Factual Allegations

2. The Respondent, Charles Wesley Rising, is licensed in the State of Vermont as a Licensed Practical Nurse under License Number 025-0004676, which is currently set to expire on January 31, 2006.

3. At all times relevant, the Respondent was employed as an L.P.N. by Lamoille County Mental Health Services, Inc. ("LCMH") located in Morrisville, Vermont. At all times relevant, J.B. was a patient of LCMH, however, the Respondent did not work directly with J.B.

4. On March 23, 2005, the Respondent admitted to State Investigator Karl Packer that on at least three occasions, outside of LCMH, he had given J.B. a .5 milligram tablet of Ativan that had been prescribed to the Respondent.

5. The Respondent also admitted to buying marijuana and smoking it with J.B. on at least one occasion, outside of LCMH.

6. 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

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

the charges below, the Parties reach a full and final Stipulation pursuant to the charges outlined in the docket number listed in the above referenced caption.

Charges

7. The State charges that 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 failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2). Any cause includes, but is not limited to, the use of drugs, narcotics, chemicals or any other types of materials pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(C); and

(ii) 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to harm the public); and

(ii) 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

8. 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.

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

10. 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. Respondent's agreement to this Stipulation and Consent Order does not constitute an admission of the Factual Allegations contained herein.

11. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.

12. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

STATE OF VERMONT



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Based upon the stipulation above, it is **ORDERED AND ADJUDGED** as follows:

A. Respondent's actions described above demonstrate grounds for discipline because Respondent violated:

- (i) 26 V.S.A. §1582(a)(3); and
- (ii) 26 V.S.A. §1582(a)(7)); and
- (ii) 3 V.S.A. §129a(a)(3).

B. The Board of Nursing hereby **SUSPENDS THE RESPONDENT'S LICENSE INDEFINITELY** but for a minimum of six months. After six months from the date of entry below have passed, the Respondent may apply for reinstatement. However, before applying for reinstatement, Respondent must obtain: (1) **an independent evaluation report by a licensed professional specializing in substance abuse pre-approved by the Board**; 2) **this independent evaluation will also address the Respondent's on going prescription for Ativan (Lorazepam)**; and (3) the results of the treatment provided by the substance abuse evaluator must indicate that the Respondent does not present a risk to the safety, health or welfare of his potential patients.

Once reinstated, the Respondent's license to practice nursing will be **CONDITIONED** for a minimum period of **THREE (3) YEARS** commencing with the date of reinstatement. The conditions imposed may include any recommendations made by the independent evaluator as approved by the Board, in addition to the following:

(1) Re-issuance of License.

Upon the commencement 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 three (3) years of supervised nursing practice in which he works 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) Completion of Substance Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue individual substance abuse counseling with a treating professional approved by the Board until the treating professional shall certify in writing to the Nursing Board that such counseling is

STATE OF VERMONT



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no longer necessary. Respondent shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

Respondent shall provide a copy of this Stipulation and Consent Order to his treating professional and cause his 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.

(5) Reports from Treating Professional.

Respondent shall authorize and cause his 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. The first report is due commencing the month after the date of entry of reinstatement and subsequent reports are due every month thereafter.

Respondent shall authorize his treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the conditioned period.

(6) 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 reinstatement 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, he 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.

(7) Reports from Employers/Nursing School.

Within one (1) month of the date of reinstatement or within one (1) month of the subsequent commencement of nursing employment, and monthly thereafter for the period the conditions are in place, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board.

STATE OF VERMONT



Prosecuting Attorney
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Montpelier, VT 05602

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 his 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.

(8) Administration of Medications.

Respondent is prohibited from administering any controlled substances. This condition may be removed only by the Respondent filing a petition with the Board after he has worked as nurse for twelve (12) weeks for at least 40 hours work every two weeks (or the part time equivalent) after the date of reinstatement.

In any such petition, the Respondent must demonstrate, to the satisfaction of the Nursing Board, that he can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from his treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

The removal of this prohibition shall not automatically result in the reinstatement of all medication privileges. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.

(9) Practice Under Supervision.

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

(10) Participation in Recovery Group.

Respondent shall participate as recommended by his treating professional, in Alcoholics/Narcotics Anonymous meetings and/or other recovery group.

(11) Abstain from Alcohol and Drug Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of prescribed medications as outlined in paragraph B.(12) for the period of time described in paragraph B.(2).

(12) Drug Use Exception.

Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled 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 substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Except for his ongoing prescription for Ativan (Lorazepam), Respondent shall inform the Board in writing of all

STATE OF VERMONT



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Montpelier, VT 05602

scheduled/controlled 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 necessity for the prescribed scheduled/controlled medications if the term exceeds 14 days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication except for his ongoing prescription for Ativan (Lorazepam), during the conditioned period, for a period greater than 14 days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

(13) Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person, who has been approved by the Board or its designee, to administer random drug and alcohol screens. 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.

(14) Interview with the Board or its Designee.

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

(15) Types of Employment Prohibited.

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

(16) 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. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Consent Order.

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

Within five (5) days of the date of reinstatement, Respondent shall notify the Board, in writing, of his current place of employment, personal address, and

STATE OF VERMONT



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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.

(18) Notification to Other States.

In the event that the Respondent is licensed as a nurse in any other state(s), he must inform the nurse licensing board of the state(s) in which the Respondent is licensed of the conditional status of his Vermont nursing license within thirty (30) days of the date of reinstatement. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(19) 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.

(20) Costs.

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

(21) 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.

(22) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on his license. The Respondent must present proof that he has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and he must demonstrate, to the satisfaction of the Nursing Board, that he poses no danger to the public or the practice of nursing and that he can safely and competently perform the duties of an L.P.N.

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 the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

STATE OF VERMONT



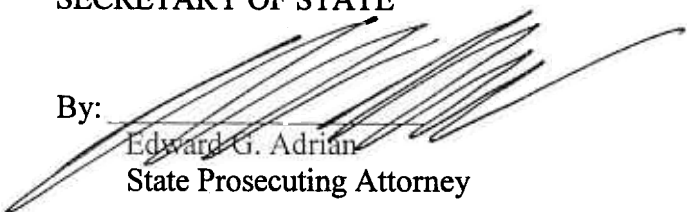
Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 8/2/05

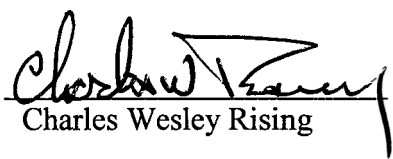
By:


Edward G. Adrian
State Prosecuting Attorney

CHARLES WESLEY RISING
RESPONDENT

Dated: 7-27-05

By:

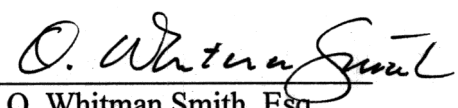

Charles Wesley Rising

Approved as to Form:

ATTORNEY FOR RESPONDENT

Dated: August 1, 2005

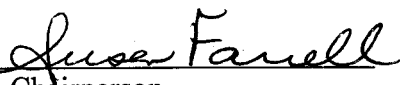
By:


O. Whitman Smith, Esq.

APPROVED AND SO ORDERED: VERMONT BOARD OF NURSING

Dated: August 8, 2005

By:


Chairperson

Date of Entry: 8/12/05

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

IN RE:)
CHARLES WESLEY RISING) **Docket No: NU 48-0205**
License No. 025-0004676)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Charles Wesley Rising, L.P.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, 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) and 129a; 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 failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2).
5. Any cause includes, but is not limited to, use of drugs, narcotics, chemicals or any other types of materials pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(C).
6. Engaging in conduct of a character likely to harm the public is unprofessional conduct upon which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(7).

Facts

7. The Respondent, Charles Wesley Rising, is licensed in the State of Vermont as a Licensed Practical Nurse under License Number 025-0004676, which is currently set to expire on January 31, 2006.

STATE OF VERMONT



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8. At all times relevant, the Respondent was employed as an L.P.N. by Lamoille County Mental Health Services, Inc. ("LCMH") located in Morrisville, Vermont. At all times relevant, J.B. was a patient of LCMH, however, the Respondent did not work directly with J.B.

9. On March 23, 2005, the Respondent admitted to State Investigator Karl Packer that on at least three occasions, outside of LCMH, he had given J.B. a .5 milligram tablet of Ativan that had been prescribed to the Respondent.

10. The Respondent also admitted to buying marijuana and smoking it with J.B. on at least one occasion, outside of LCMH.

Charges

11. 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 failing to conform to the essential standards of acceptable and prevailing nursing practice pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(B)(2). Any cause includes, but is not limited to, the use of drugs, narcotics, chemicals or any other types of materials pursuant to the Administrative Rules of the Board of Nursing, Chapter 4, Rule IV(II)(C); and

(ii) 26 V.S.A. §1582(a)(7) (engaging in conduct of a character likely to harm the public); and

(ii) 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 license of Charles Wesley Rising should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

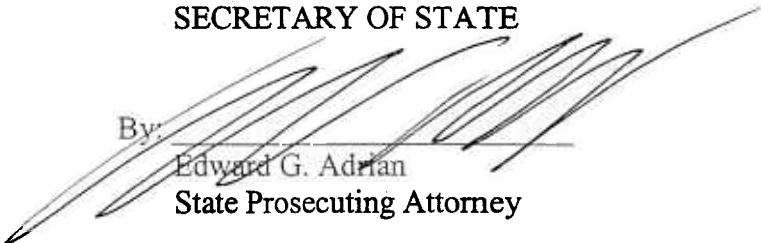
Dated at Montpelier, Vermont this 19th day of April 2005.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

STATE OF VERMONT
SECRETARY OF STATE

By: 

Edward G. Adrian
State Prosecuting Attorney

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