

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

IN RE:

STEPHENIE H. SMITH

License No. 026.0023309

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Docket No. 2009-513

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Betsy Ann Wrask, and the Respondent, Stephenie H. Smith, 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. Stephenie H. Smith (the "Respondent"), of Colchester, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0023309. This license was originally issued on or about March 19, 1997 and is currently set to expire on or about March 31, 2011.
3. By way of history, on or about November 17, 2003 pursuant to a Stipulation and Consent Order, Respondent was conditioned by the Board for a minimum of two (2) years. Attachment A. This discipline was due in part to allegations that Respondent had committed multiple documentation errors. Attachment A.
4. At all times relevant, Respondent was employed as a Registered Nurse through Maxim Health Systems ("Maxim"), located in Albany, New York, and was administering flu and pneumonia vaccines at a clinic site in Burlington, Vermont.
5. On or about October 2, 2009, Respondent self-reported to Maxim via an Incident Report that at her vaccine clinic the previous day, Respondent had inadvertently attempted to inject a patient with the pneumonia vaccine without realizing that Respondent had not drawn up the pneumonia vaccine in her syringe before she had

STATE OF VERMONT



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inserted the syringe into the patient. Respondent advised Maxim that the syringe that she had just inserted into the patient had been Respondent's last available syringe. Respondent further reported that she then advised the patient that because she had no other available syringes, she would not be able to administer the vaccine to the patient without reusing the just-used syringe, which Respondent advised the patient she did not wish to do. However, Respondent advised Maxim that the patient indicated she still wanted the pneumonia vaccine and therefore, "[a]gainst my better judgment," Respondent reused that syringe to draw up the pneumonia vaccine from a nearly-empty vaccine bottle, and injected the patient with this previously-used syringe. Respondent reported to Maxim that "absolutely no medical safety issues were involved" in this incident.

6. Respondent was thereafter terminated from Maxim for a violation of policy in reusing this syringe.
7. On or about March 4, 2010 in an interview with State Investigator Jeffrey K. Jones, Sr., Respondent's attorney confirmed that Respondent had reused the syringe that Respondent had already inserted into the patient when empty. Respondent's attorney advised that the patient then demanded the vaccination and directed the Respondent to reuse the syringe. Therefore, Respondent did reuse the syringe, and drew the pneumonia vaccine from a vial that had only one dose of the vaccine remaining.
8. By reusing a syringe for vaccination that had already been inserted into a patient, Respondent has violated essential standards of nursing practice and 3 V.S.A. § 129a(b)(1) and (2); and 3 V.S.A. § 129a(a)(3).
9. Respondent currently works for TLC Nursing Associates, LLC ("TLC"), an agency specializing in non-medical homecare and healthcare staffing. On or about July 2, 2010 in a letter to Investigator Jones, TLC President M.B. advised that Respondent began working for TLC on or about October 20, 2009, and that her performance has been very good. M.B. further advised that TLC has not received any complaints from clients regarding Respondent's work performance.

Charges

10. 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

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- 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).

Understandings

11. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
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 **CONDITIONS** Respondent's license to practice nursing **FOR A MINIMUM OF SIX (6) MONTHS from the date of entry below**. The conditions are 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 a

STATE OF VERMONT



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minimum of six (6) months 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 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.

If Respondent practices as a nurse through TLC during the conditioned period, Respondent's immediate supervisor shall be a TLC registered nurse who is licensed and in good standing with the Board.

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 Directors.

Within one (1) month of the date of entry of this Order 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. 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.

If Respondent practices as a nurse through TLC during the conditioned period, the above-described monthly employer reports shall be completed and submitted by a TLC registered nurse who is licensed and in good standing with the Board.

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.

If Respondent practices as a nurse through TLC during the conditioned period, Respondent shall practice nursing only in a setting where a TLC registered nurse is immediately available by pager or phone. Otherwise, Respondent shall practice nursing

STATE OF VERMONT



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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 requiring a nursing or nursing assistant license during the effective period of this Consent Order, **with the exception that Respondent shall be permitted to work for TLC during the conditioned period, and accept and perform nursing staffing assignments from TLC.**

(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.

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.

(8) 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.

(9) 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.

(10) 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.

(11) Costs.

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

STATE OF VERMONT



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(12) 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.

(13) 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: 12-17-10

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Betsy Ann Wrask
State Prosecuting Attorney

Dated: 12/16/10

STEPHENIE H. SMITH
RESPONDENT

By: [Signature]
Stephenie H. Smith

APPROVED AS TO FORM:

Dated: 12/16/10

ATTORNEY FOR RESPONDENT

By: [Signature]
Kerin E. Stackpole, Esq.

APPROVED AND SO ORDERED:

Dated: 1/10/11

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

Date of Entry: 1/11/11
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STATE OF VERMONT
BOARD OF NURSING

IN RE:

STEPHEN SMITH

License No: 026-0023309

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Docket No. NU49-0103

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through its State Prosecuting Attorney, Edward Adrian, and Respondent Stephen Smith, who stipulate and agree as follows:

1. The Vermont Board of Nursing has jurisdiction to investigate complaints of unprofessional conduct and approve stipulations and consent orders pursuant to 26 V.S.A. §1582(a) and 3 V.S.A. §§129, 129a and 814(d); and the Administrative Rules for the Office of Professional Regulation and the Board Administrative Rules.
2. The Respondent is a Registered Nurse under License Number 26-23309.
3. Respondent's license has a current expiration date of March 31, 2005.
4. At all times relevant to these charges, the Respondent was employed by Fletcher Allen Health Care of Burlington, Vermont through his traveling agency, MedStaff, Inc.
5. Respondent made the following documentation errors:
 - a) On or about January 15, 2003, Respondent failed to document the neuro vital signs of patient B between the hours of 12:00 a.m. and 8:00 a.m.
 - b) On or about January 15, 2003, Respondent failed to document the neuro vital signs of patient C and failed to document the administration of fluids.
 - c) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient A between the hours of 3:00 a.m. and 8:00 a.m.
 - d) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient D.
 - e) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient E between the hours of 2:00 a.m. and 8:00 a.m.

STATE OF VERMONT



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- f) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient F between the hours of 1:00 a.m. and 8:00 a.m. and failed to document the administration of fluids.
 - g) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient G.
 - h) On or about January 16, 2003, Respondent failed to document the neuro vital signs of patient H.
- 6. At all times relevant between January 12 and 16, 2003, the Respondent was under standing orders to take and record the neuro vital signs of all patients every four hours.
 - 7. Although the Respondent does not admit to the truth of the facts 5a-h and 6, the Respondent does not contest that the State would be able to prove these facts by a preponderance of the evidence at a hearing.
 - 8. Respondent admits that the alleged conduct would constitute unprofessional conduct as set forth below in the Board's Order.
 - 9. 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.
 - 10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
 - 11. Respondent waives any notification period and requests that this be heard at the next available Board meeting. Respondent specifically waives any claims that any disclosures made by him to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
 - 12. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
 - 13. 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.
 - 14. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing.
 - 15. Respondent agrees that the Board may set forth the Order below.

STATE OF VERMONT



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ORDER

16. Based on the Stipulation above it is **ORDERED AND ADJUDGED** as follows:

A. The Respondent's alleged conduct described in the paragraphs above, taken alone, together or in any combination, constitutes unprofessional conduct pursuant to, and also violates:

- (1) 26 V.S.A. §1582(a)(3), specifically Respondent:
 - (a) performed unsafe or unacceptable patient care; and
 - (b) failed to conform to the essential standards of acceptable and prevailing nursing practice; and
- (2) Administrative Rules of the Board of Nursing ("ARBN") Chapter 4, Rule IV(B)(2), specifically Respondent demonstrated the inability to practice nursing competently because of unsafe or unacceptable patient care and failure to conform to the essential standards of acceptable and prevailing nursing practice.

B. The Board of Nursing hereby **CONDITIONS** Respondent's license for **A MINIMUM OF TWO (2) YEARS** from the date of entry of this Order. The **CONDITIONS** are as follows:

(1) 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 **two (2) years** of supervised nursing practice in which Respondent 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.

(2) Patient Assessment and Documentation Course.

Respondent must complete (i.e.: receive a passing grade, if applicable) a course on patient assessment and documentation, with prior approval by the Board or its designee, and then submit written documentation (certificate of completion, etc.) to verify same to the satisfaction of the Board or its designee.

(3) Notification to Employers.

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 employment, Respondent shall cause Respondent's immediate supervisor to write to the Board,

STATE OF VERMONT



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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.

(4) Reports from Employers.

Within one (1) month of the date of entry of this Consent Order and **monthly** thereafter, Respondent shall cause every employer Respondent has worked for during the relevant time period to submit to the Board an evaluation of Respondent's performance (i.e., indicating that the patient documentation Respondent submits is sufficient, etc.) and attendance during that time period. This report shall be submitted in writing on forms issued by the Board.

In the event Respondent is not employed in nursing during any month or portion thereof, Respondent shall submit to the Board, in writing, a self-report describing other employment or activities. In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Consent Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.

Respondent shall sign a consent, upon request of the Board, to authorize Respondent's employer 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.

(5) Practice Under Supervision.

Respondent shall practice only in a setting where Respondent has on-site supervision by a registered nurse that is licensed and in good standing and where any patient documentation must be reviewed by the supervisor. If the Respondent's supervisor is not working the same shift as the Respondent, the Respondent shall cause all of his nursing documentation to be reviewed by his supervisor during the next available shift the supervisor is working following the Respondent's last shift.

(6) Types of Employment Prohibited.

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 effective period of this Consent Order.

(7) 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 as a nurse in the State of Vermont.

(8) Costs.

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

(9) Violation of the Consent Order.

STATE OF VERMONT



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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.

(10) Completion of Conditional License Period.

Upon completion of the conditional license period, Respondent may petition the Board to remove any and all conditions on his license and after formal review by the Board, Respondent's nursing license may be formally restored by appropriate Board action. Respondent shall demonstrate, to the Board's satisfaction that Respondent fully complied with all the terms of this Consent Order.

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.

AGREED TO:

Dated: 11/3/03

STATE OF VERMONT
SECRETARY OF STATE

by:

Edward G. Adrian
State Prosecuting Attorney

STEPHEN SMITH
RESPONDENT

Dated: 10-30-03

by:

Stephen Smith

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Attorney for Respondent
Approved as to Form:

Dated: 10-30-03

by:

Ima L. Shoup
Attorney for Respondent

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: Nov. 10, 2003

by: Susan O. Farrell
Chairperson

Dated entered: 11/17/03

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Office of
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