

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

IN RE:

VIRGINIA SWAIN

License No. 026-0022406

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Docket No: NU08-0703

REINSTATEMENT STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Virginia Swain, 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 pursuant to 3 V.S.A. §§129, 129a, and 814; 26 V.S.A. §1582, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.

Statement of Facts

2. The Respondent, Virginia Swain, is licensed in the State of Vermont as a registered nurse holding license number 026-0022406. This license was originally issued on or about August 28, 1995 and expired on March 31, 2007.
3. The Respondent's license is currently suspended pursuant to a Findings of Fact, ~~Conclusions of Law~~, and Order entered by the Board on or about October 10, 2008 (the "Order"). (Attachment A). The Order was the result of the Respondent's admitted intermittent substance abuse from 2002-2006 and several practice errors that took place in June 2006. (Attachment A).
4. By way of history, the Respondent's license was previously conditioned for three (3) years pursuant to a Stipulation and Consent Order entered by the Board on or about February 2, 2004. (Attachment B). The Respondent's license was conditioned based on the Respondent's admitted diversion of 60-70mg of Morphine for the purpose of committing suicide. (Attachment B).
5. In a letter to the Board dated February 19, 2008, the Respondent expressed her desire for the Board to consider reinstating her registered nursing license. In her letter, the Respondent advised that she has remained clean and has built a support system within her family and the

recovery community. The Respondent further advised that she is working full time for a health agency and that she is ready to return to the practice of nursing.

6. In support of her reinstatement, the Respondent provided an independent drug and alcohol evaluation conducted by Melody A. Root, a licensed mental health counselor in the State of Massachusetts, dated February 4, 2008. In her evaluation, Ms. Root reported that since the Respondent entered the Brattleboro Retreat in the fall of 2006, the Respondent's urine screens have all been negative, she attended addiction and recovery groups, she continues to attend AA, and that she currently meets with a therapist once a week. Ms. Root concluded that the Respondent's opiate addiction is in remission and that the Respondent is able to practice nursing safely and competently. Ms. Root recommended that the Board reinstate the Respondent's nursing license.

7. The Respondent also provided letters of support from her current employer and her career counselor. Both letters contained positive reports regarding the Respondent's motivation to maintain her sobriety and pursue her career goals as well as the Respondent's excellent quality of work in her current position.

8. Finally, the Respondent provided a letter of support from her substance abuse counselor Jo-Ann Tolliver, a licensed clinical social worker in the State of Massachusetts. Ms. Tolliver advised that the Respondent has participated in treatment on a weekly basis since May 2007. Ms. Tolliver further advised that the Respondent has had no substance abuse issues since she began treatment and that she has made significant progress in addressing the issues that led to her addiction.

9. The Respondent agrees that the conditions below are necessary for her to return to the practice.

Understandings

10. 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.

11. 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.

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

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

14. 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.

15. 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.

16. 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 **REINSTATES** and **CONDITIONS** the Respondent's registered nursing license for a minimum period of **THREE (3) YEARS**. The conditions are as follows:

(1) License to be labeled "Conditioned"

Any license issued to the Respondent by this Board shall be 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 Respondent works at least forty (40) hours every two (2) weeks as a registered 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 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 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 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.

(5) 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.

The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due every month thereafter.

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

(6) Participation in Recovery Groups.

Respondent shall participate as recommended by her treating professionals, in Alcoholics Anonymous and/or Narcotics Anonymous or other recovery group(s).

(7) 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 and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(8) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(9) for the period of time described in paragraph A.(2).

(9) Drug Use Exception.

The Respondent shall not take prescribed medications unless necessary. 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 substance abuse issue(s) 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 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 during the term of this Consent Order 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.

(10) 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 registered 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 registered 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 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 Stipulation and Consent Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.

(11) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of registered nursing employment and monthly thereafter, Respondent shall cause every registered 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. This report shall be submitted in writing on forms issued by 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. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(12) 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 she has worked as nurse for six (6) months for at least 40 hours 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 she can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from her 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.

(13) Practice Under Supervision.

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

(14) 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 personal care provider in Vermont during the effective period of this Consent Order.

(15) Interview with the Board or its Designee.

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

(16) 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 employment, personal address, and 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.

(17) 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 recognizes that the Respondent is currently living out of state in Massachusetts. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Consent Order.

(18) 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 registered 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.

(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 as a registered 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.

(20) Release of Information Forms.

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

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

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

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

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

(21) Costs.

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

(22) 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.

(23) 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 and that she can safely and competently perform the duties of a registered nurse.

B. Notwithstanding any provision above, The Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

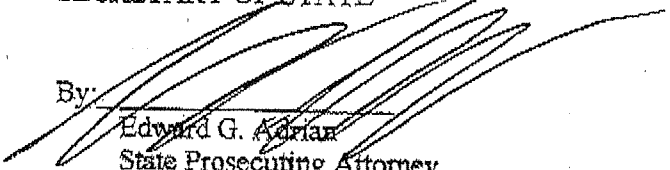
C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

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: 4/7/08

STATE OF VERMONT
SECRETARY OF STATE

By: 

Edward G. Adrian
State Prosecuting Attorney

VIRGINIA SWAIN
RESPONDENT

Dated: 4/7/08

By: Virginia Swain
Virginia Swain

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 4-14-08

By: Sandra Rice APRN
Chairperson

Date of Entry: 4/15/08

nu.swain.stp

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re Virginia Swain } Docket No. NU89-0606
License No. 026-022406 }

FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER

Introduction:

On Monday 9 July 2007 the Board heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Virginia Swain. Board members Susan O. Farrell (Chairperson), Hollie Shaner-McRae *ad hoc*, Sandra J. Norton, Laurey M. Tyo and Alan Weiss participated in the hearing of this matter. Board members Ellen Leff and Linda M. Y. Rice recused. The Respondent appeared *pro se*. Judith Cutler represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a specification of charges (the "Charges" dated 11 April 2007) against the Respondent Virginia Swain alleging unprofessional conduct for substandard practice and substance abuse. The Board disciplined the Respondent in 2004 for her admitted diversion of morphine from her employer. The current charges do not allege diversion. The State alleges the Respondent:

- (A) Committed practice errors at the Facility where she worked prior to June 2006;
- (B) Abused opioids that she received from a friend who had a prescription for Vicodin and oxycodone. The State alleges this occurred between June and August 2006 prior to Respondent receiving addiction treatment at the Brattleboro Retreat beginning in the fall of 2006.

Charges at ¶¶ 3-10.

Findings of Fact &
Conclusions of Law:

1. This Board licenses the Respondent and may exercise disciplinary authority for alleged acts of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); and Admin. Rules for the Bd. of Nursing and the Office of Prof. Reg.
2. Respondent holds a conditioned State of Vermont registered nursing license. The conditions are in effect due to incidents of morphine diversion in 2003.

ATTACHMENT A

3. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
4. The Respondent does not contest the factual allegations set forth in the Charges.
5. The Board finds that the State met its evidentiary burden based on the admissions of the Respondent both in her answer to the Charges and her testimony before the Board.
6. In addition to the written admissions the Respondent filed with the Board prior to the evidentiary hearing, the evidence showed that the Respondent abused opioids intermittently beginning in 2002 until sometime in 2006. The opioid abuse coincided with significant life stressors the Respondent faced beginning 2002.
7. The Respondent openly acknowledged intermittent substance abuse starting in 2002 and continuing until the fall of 2006.
8. The evidence also showed that the Respondent did not have a history of substance abuse problems prior to 2002 when she began diverting morphine from her employer.
9. The evidence showed that the Respondent started treatment at the Brattleboro Retreat in the fall of 2006 and she has successfully remained in recovery since approximately September 2006.
10. Documentary evidence reviewed by the Board showed Respondent enrolled in the Brattleboro Retreat's "Starting Now" program and that her drug testing results have returned negative for substances of abuse. See Exhibit A (Letter to OPR from Peter Lolacano, MA, LADC, MAC).
11. The Board wants to commend the Respondent on the success she has achieved thus far in her recovery from substance abuse.
12. However, the Board is not satisfied from Respondent's testimony that enough time has passed in recovery to demonstrate that she may continue nursing safely in the near term.
13. The Board also needs to see further evidence that the Respondent can successfully remain in recovery before the Board permits her to practice the profession of nursing.
14. The Board will therefore suspend the Respondent's license for a period extending until at least the end of this year.
15. After 1 January 2008, the Board will entertain a petition for reinstatement with conditions.
16. In considering whether to issue a conditioned license to the Respondent after the 1st of next year, the Board will look to whether the Respondent can remain in recovery.
17. Board consideration of a reinstatement petition will require an independent evaluation by a licensed drug and alcohol counselor as well as continued abstinence from substances of abuse by the Respondent.

18. In light of these findings, the Board rules as follows on the individual charges brought by the State against the Respondent:

■ 26 V.S.A. § 1582(a)(3) (unable to practice nursing competently by reason of any cause). The Board rules that the State met its burden of proof. At this point the Board finds the Respondent is unable to practice nursing for the reasons set forth in its findings.

■ 3 V.S.A. § 129a(b)(1) and 3 V.S.A. § 129a(b)(2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct). The Board rules that the State met its burden of proof. The Respondent's admissions and the record indicate several instances of failure to practice competently.

■ 26 V.S.A. § 1582(a)(5) (intemperance). The Board rules that the State met its burden of proof. Although the Respondent is successfully in recovery, during the period covered in the Charges the Respondent abused substances on multiple occasions.

■ 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). The State did not go forward with a §129a(a)(3) charge. The statement of facts contained in the Specification of Charges did not allege that the Respondent violated any law governing the practice of the profession. This charge is dismissed.

ORDER

Based on the findings of facts set forth above, the Board of Nursing therefore INDEFINITELY SUSPENDS the Respondent's license until at least the remainder of this year. The Board of Nursing will accept a petition for reinstatement after 1 January 2008 with a showing that Respondent has the ability to practice safely under supervision and with a conditioned license.

- END -

(signature page to follow)

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Vermont Board of Nursing:

By: Susan O. Farrell Date: 10/08/07
Susan O. Farrell, RN
Board Chairperson

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 10/10/07

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

IN RE: VIRGINIA F. SWAIN, R.N.) Docket No. NU08-0703
License No. 026-0022406)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and Respondent Virginia F. Swain, R.N., who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Virginia F. Swain (the "Respondent") of Warren, Vermont is a licensed registered nurse holding license number 026-0022406, issued by the State of Vermont. This license was originally issued on or about August 28, 1995 and is set to expire on March 31, 2005.
3. At all relevant times the Respondent was practicing as a registered nurse and worked at the Copley Hospital (the "Hospital") located in Morrisville, Vermont.
4. On or about July 17, 2003, the Respondent was terminated from employment at the Hospital.
5. Morphine is readily available for administration to patients at the Hospital in 2mg and 4 mg tubex doses.
6. On or about June 14, 2003, the Respondent removed 10 mg of Morphine and then wasted the same amount 7 minutes later.
7. On or about June 18, 2003, at 8:43 p.m., the Respondent removed 10 mg of Morphine to administer to patient D.A. Eight minutes later the Respondent administered 2 mg and wasted 8 mg. At 9:00 p.m. the Respondent indicated that

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

she removed 10 mg of Morphine for patient D.A.. Respondent did not document how this Morphine was utilized.

8. On or about June 23, 2003, the Respondent removed 10 mg of Morphine to administer to patient D.A. at 6:08 p.m. Four minutes later the Respondent wasted the 10 mg of Morphine.
9. On or about June 23, 2003, a physician ordered that an "on demand" 4mg dose of Morphine could be administered to patient H.P. The Respondent administered a 8 mg dose to the patient at 6:40 p.m. and a 5 mg dose to the patient at 7:20 p.m.
10. On or about June 26, 2003, the Respondent removed 10 mg of Morphine as noted in patient, R.G.'s event record. R.G.'s event record indicated that the 10 mg of Morphine was wasted 9 minutes later.
11. On or about June 27, 2003, the Respondent removed 10 mg of Morphine as noted in patient C.C.'s event record and recorded that she administered 2 mg and wasted 8 mg, 8 minutes later.
12. On or about June 28, 2003, the Respondent removed 10 mg of Morphine for patient B.D. The Respondent administered 4 mg of Morphine and wasted 6 mg.
13. On or about July 10, 2003, because of repeated inaccurate documentation problems of controlled medications, the Respondent entered into a "Narcotic Administration and Documentation Agreement with the Hospital. This Agreement called for the Respondent to utilize the smallest possible pre filled tubex, when administering IV medications. The Agreement also called for the Respondent to find another nurse to visually witness the "wasting" of any narcotic medications.
14. On or about July 15, 2003, the Respondent administered 2 mg of Morphine to patient H.B. and wasted 2 mg of Morphine.
15. On or about July 15, 2003, the Respondent administered Percocet to patient H.B. when the order called for the administration of Vicodin. The H.B.'s blood pressure dropped from 118/68 to 86/44 as a result of the medication error.
16. On or about August 6, 2003, the Respondent contacted Vada Aucter of the Vermont Board of Nursing and told Ms. Aucter that the Respondent was diverting Morphine from the Hospital. The Respondent further stated that the purpose for the Morphine diversion was that she was planning on committing suicide. The Respondent admitted to diverting 60-70 mg of Morphine.
17. On or about August 8, 2003 the Respondent informed Investigator Michael Colgan that she had "disposed of the Morphine that I had stolen for my suicide attempt."

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Office of
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Montpelier, VT 05602

Charges

18. The above acts and circumstances, alone or in combination, violate:
- i. 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);
 - ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
 - iii. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public);
 - iv. Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care);
 - v. Rule Chapter 4, Rule IV, II, D. 3. (falsifying or altering clinical records or making inaccurate or misleading entries); and
 - vi. Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

Understandings

19. 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. In respect to paragraphs C(8) and C(11) below, the parties have not reached a Stipulation. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance. In respect to these paragraphs the State and the Respondent agree to abide by the decision of the Board as to the appropriate conditions/sanctions. The State and the Respondent further agree that the decision of the Board shall be binding and final on the parties and that the parties will not contest the decision of the Board in any Forum.
20. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
21. 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.

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Professional Regulation
Montpelier, VT 05602

22. Respondent voluntarily waives her right to charges and a contested hearing before the Board of Nursing.
23. The Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation.
24. Respondent agrees that the State has sufficient evidence for the Board to find that Respondent has engaged in unprofessional conduct and that the Order set forth below may be entered by the Board.

ORDER

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. 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);
- ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
- iii. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public);
- iv. Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care);
- v. Rule Chapter 4, Rule IV, II, D. 3. (falsifying or altering clinical records or making inaccurate or misleading entries); and
- vi. Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

B. The Respondent has already provided to the Board an independent evaluation by a mental health provider and an independent evaluation by a licensed professional specializing in substance abuse. These reports indicate that 1) the Respondent does not have a diagnosis for substance abuse issues and 2) that she is fit to resume the practice of nursing and does not present a risk to the safety, health or welfare of her potential patients.

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Office of
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C. The Board of Nursing hereby **CONDITIONS** Respondent's license for A **MINIMUM OF THREE YEARS** from the date of entry of this Order.

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 three (3) years of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks as a nurse. After a minimum of eighteen (18) months, the Respondent is free to petition the Board to modify and/or remove her conditions. 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.

Respondent's license is additionally conditioned as follows:

(3) Completion of Mental Health Counseling and Treatment Plan.

Respondent shall enter into and continue mental health 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 no longer necessary. Respondent shall enter into and comply with the mental health 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 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.

(5) 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. The first report is due commencing the month after the date of the imposition of the conditions and subsequent reports are due every month thereafter.

(6) Reports from Employers.

Within one (1) month of the date of the imposition of the conditions and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's performance and attendance

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

during that month. This report shall be submitted in writing on forms issued by the Board.

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.

(8) Practice Under Supervision.

There is no Stipulation concerning this condition. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance.

(9) Interview with the Board or its designee.

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

(10) Administration of Medications.

Respondent shall only administer and/or have access to medications under direct supervision.

(11) Types of Employment Prohibited.

There is no Stipulation concerning this condition. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance.

(12) 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.

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

Within five (5) days of the date of the imposition of the conditions, 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. Respondent shall provide a copy of this Consent Order to all nursing employers, current and future, and shall inform them of the conditional status of her license.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

(14) 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 she has otherwise complied with the requirements for license renewal.

(15) Disclosure Form.

In fulfilling the conditions of this Order which require the Respondent to authorize various persons to report information or to discuss the Respondent with the Board, the Respondent must execute a consent to disclose form. The authorization must allow the information to also be provided to the Office of Professional Regulation investigators. The authorization must also allow the Board to review the file generated by the mental health treatment provider. However, the authorization shall only apply to information in the mental health treatment provider's file directly related to the Respondent's treatment and not to any personal issues.

(17) Costs.

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

(18) 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.

(19) 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. The Respondent must also present proof of successful mental health rehabilitation and she must demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a Registered Nurse. The Respondent may petition the Board to remove and/or modify the conditions as enumerated above after a minimum of eighteen (18) months. However, it shall be left to the sole discretion of the Board to remove and/or modify any condition before the three (3) year period as outlined in paragraph C(2) above has been completed.

D. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

E. This Stipulation and Consent Order is a matter of public record and may

STATE OF VERMONT



Prosecuting Attorney.
Office of
Professional Regulation
Montpelier, VT 05602

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be reported to other licensing authorities as provided in 3 V.S.A. §129(b).

F. 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.

G. In respect to paragraphs C(5) and C(11), the parties have not reached a Stipulation. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance. In respect to these paragraphs the State and the Respondent agree to abide by the decision of the Board as to the appropriate conditions/sanctions. The State and the Respondent further agree that the decision of the Board shall be binding and final on the parties and that the parties will not contest the decision of the Board in any Forum.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 1/6/04

By: [Signature]

Edward G. Adrian
State Prosecuting Attorney

VIRGINIA F. SWAIN
RESPONDENT

Dated: 1/15/04

By: [Signature]

Virginia F. Swain

Attorney for Respondent
Approved as to form:

Dated: 1/05/04

By: [Signature]

Peter F. Welch

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: Jan 12, 2004

By: [Signature]

Chairperson

Date of Entry 2/2/04

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05601

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F. Corneille, MA

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

In re Virginia Swain } Docket No. NU89-0606
License No. 026-022406 }

**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Introduction:

On Monday 9 July 2007 the Board heard this contested case of alleged unprofessional conduct brought by the State of Vermont against Respondent Virginia Swain. Board members Susan O. Farrell (Chairperson), Hollie Shaner-McRae *ad hoc*, Sandra J. Norton, Laurey M. Tyo and Alan Weiss participated in the hearing of this matter. Board members Ellen Leff and Linda M. Y. Rice recused. The Respondent appeared *pro se*. Judith Cutler represented the State of Vermont. Board counsel Kevin F. Leahy presided.

The State brought a specification of charges (the "Charges" dated 11 April 2007) against the Respondent Virginia Swain alleging unprofessional conduct for substandard practice and substance abuse. The Board disciplined the Respondent in 2004 for her admitted diversion of morphine from her employer. The current charges do not allege diversion. The State alleges the Respondent:

- (A) Committed practice errors at the Facility where she worked prior to June 2006;
- (B) Abused opioids that she received from a friend who had a prescription for Vicodin and oxycodone. The State alleges this occurred between June and August 2006 prior to Respondent receiving addiction treatment at the Brattleboro Retreat beginning in the fall of 2006.

Charges at §§ 3-10.

Findings of Fact &
Conclusions of Law:

1. This Board licenses the Respondent and may exercise disciplinary authority for alleged acts of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); and Admin. Rules for the Bd. of Nursing and the Office of Prof. Reg.
2. Respondent holds a conditioned State of Vermont registered nursing license. The conditions are in effect due to incidents of morphine diversion in 2003.

3. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a (c).
4. The Respondent does not contest the factual allegations set forth in the Charges.
5. The Board finds that the State met its evidentiary burden based on the admissions of the Respondent both in her answer to the Charges and her testimony before the Board.
6. In addition to the written admissions the Respondent filed with the Board prior to the evidentiary hearing, the evidence showed that the Respondent abused opioids intermittently beginning in 2002 until sometime in 2006. The opioid abuse coincided with significant life stressors the Respondent faced beginning 2002.
7. The Respondent openly acknowledged intermittent substance abuse starting in 2002 and continuing until the fall of 2006.
8. The evidence also showed that the Respondent did not have a history of substance abuse problems prior to 2002 when she began diverting morphine from her employer.
9. The evidence showed that the Respondent started treatment at the Brattleboro Retreat in the fall of 2006 and she has successfully remained in recovery since approximately September 2006.
10. Documentary evidence reviewed by the Board showed Respondent enrolled in the Brattleboro Retreat's "Starting Now" program and that her drug testing results have returned negative for substances of abuse. *See Exhibit A (Letter to OPR from Peter Lolacano, MA, LADC, MAC).*
11. The Board wants to commend the Respondent on the success she has achieved thus far in her recovery from substance abuse.
12. However, the Board is not satisfied from Respondent's testimony that enough time has passed in recovery to demonstrate that she may continue nursing safely in the near term.
13. The Board also needs to see further evidence that the Respondent can successfully remain in recovery before the Board permits her to practice the profession of nursing.
14. The Board will therefore suspend the Respondent's license for a period extending until at least the end of this year.
15. After 1 January 2008, the Board will entertain a petition for reinstatement with conditions.
16. In considering whether to issue a conditioned license to the Respondent after the 1st of next year, the Board will look to whether the Respondent can remain in recovery.
17. Board consideration of a reinstatement petition will require an independent evaluation by a licensed drug and alcohol counselor as well as continued abstinence from substances of abuse by the Respondent.

18. In light of these findings, the Board rules as follows on the individual charges brought by the State against the Respondent:

■ 26 V.S.A. § 1582(a)(3) (unable to practice nursing competently by reason of any cause). The Board rules that the State met its burden of proof. At this point the Board finds the Respondent is unable to practice nursing for the reasons set forth in its findings.

■ 3 V.S.A. § 129a(b)(1) and 3 V.S.A. § 129a(b)(2) (failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct). The Board rules that the State met its burden of proof. The Respondent's admissions and the record indicate several instances of failure to practice competently.

■ 26 V.S.A. § 1582(a)(5) (intemperance). The Board rules that the State met its burden of proof. Although the Respondent is successfully in recovery, during the period covered in the Charges the Respondent abused substances on multiple occasions.

■ 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). The State did not go forward with a § 129a(a)(3) charge. The statement of facts contained in the Specification of Charges did not allege that the Respondent violated any law governing the practice of the profession. This charge is dismissed.

ORDER

Based on the findings of facts set forth above, the Board of Nursing therefore INDEFINITELY SUSPENDS the Respondent's license until at least the remainder of this year. The Board of Nursing will accept a petition for reinstatement after 1 January 2008 with a showing that Respondent has the ability to practice safely under supervision and with a conditioned license.

- END -

(signature page to follow)

3

Vermont Board of Nursing:

By: Susan O. Farrell Date: 10/08/07
Susan O. Farrell, RN
Board Chairperson

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 10/10/07

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

IN RE: VIRGINIA F. SWAIN, R.N.) Docket No. NU08-0703
License No. 026-0022406)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and Respondent Virginia F. Swain, R.N., who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("Board") has authority to approve consent orders, issue warnings or reprimands, suspend, revoke, limit, condition or prevent the renewal of current or lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129(a)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a); the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Virginia F. Swain (the "Respondent") of Warren, Vermont is a licensed registered nurse holding license number 026-0022406, issued by the State of Vermont. This license was originally issued on or about August 28, 1995 and is set to expire on March 31, 2005.
3. At all relevant times the Respondent was practicing as a registered nurse and worked at the Copley Hospital (the "Hospital") located in Morrisville, Vermont.
4. On or about July 17, 2003, the Respondent was terminated from employment at the Hospital.
5. Morphine is readily available for administration to patients at the Hospital in 2mg and 4 mg tubex doses.
6. On or about June 14, 2003, the Respondent removed 10 mg of Morphine and then wasted the same amount 7 minutes later.
7. On or about June 18, 2003, at 8:43 p.m., the Respondent removed 10 mg of Morphine to administer to patient D.A. Eight minutes later the Respondent administered 2 mg and wasted 8 mg. At 9:00 p.m. the Respondent indicated that

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

she removed 10 mg of Morphine for patient D.A.. Respondent did not document how this Morphine was utilized.

8. On or about June 23, 2003, the Respondent removed 10 mg of Morphine to administer to patient D.A. at 6:08 p.m. Four minutes later the Respondent wasted the 10 mg of Morphine.
9. On or about June 23, 2003, a physician ordered that an "on demand" 4mg dose of Morphine could be administered to patient H.P. The Respondent administered a 8 mg dose to the patient at 6:40 p.m. and a 5 mg dose to the patient at 7:20 p.m.
10. On or about June 26, 2003, the Respondent removed 10 mg of Morphine as noted in patient, R.G.'s event record. R.G.'s event record indicated that the 10 mg of Morphine was wasted 9 minutes later.
11. On or about June 27, 2003, the Respondent removed 10 mg of Morphine as noted in patient C.C.'s event record and recorded that she administered 2 mg and wasted 8 mg, 8 minutes later.
12. On or about June 28, 2003, the Respondent removed 10 mg of Morphine for patient B.D. The Respondent administered 4 mg of Morphine and wasted 6 mg.
13. On or about July 10, 2003, because of repeated inaccurate documentation problems of controlled medications, the Respondent entered into a "Narcotic Administration and Documentation Agreement with the Hospital. This Agreement called for the Respondent to utilize the smallest possible pre filled tubex, when administering IV medications. The Agreement also called for the Respondent to find another nurse to visually witness the "wasting" of any narcotic medications.
14. On or about July 15, 2003, the Respondent administered 2 mg of Morphine to patient H.B. and wasted 2 mg of Morphine.
15. On or about July 15, 2003, the Respondent administered Percocet to patient H.B. when the order called for the administration of Vicodin. The H.B.'s blood pressure dropped from 118/68 to 86/44 as a result of the medication error.
16. On or about August 6, 2003, the Respondent contacted Vada Aucter of the Vermont Board of Nursing and told Ms. Aucter that the Respondent was diverting Morphine from the Hospital. The Respondent further stated that the purpose for the Morphine diversion was that she was planning on committing suicide. The Respondent admitted to diverting 60-70 mg of Morphine.
17. On or about August 8, 2003 the Respondent informed Investigator Michael Colgan that she had "disposed of the Morphine that I had stolen for my suicide attempt."

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Charges

18. The above acts and circumstances, alone or in combination, violate:
- i. 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);
 - ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
 - iii. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public);
 - iv. Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care);
 - v. Rule Chapter 4, Rule IV, II, D. 3. (falsifying or altering clinical records or making inaccurate or misleading entries); and
 - vi. Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

Understandings

19. 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. In respect to paragraphs C(8) and C(11) below, the parties have not reached a Stipulation. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance. In respect to these paragraphs the State and the Respondent agree to abide by the decision of the Board as to the appropriate conditions/sanctions. The State and the Respondent further agree that the decision of the Board shall be binding and final on the parties and that the parties will not contest the decision of the Board in any Forum.
20. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
21. 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.

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Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

22. Respondent voluntarily waives her right to charges and a contested hearing before the Board of Nursing.
23. The Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation.
24. Respondent agrees that the State has sufficient evidence for the Board to find that Respondent has engaged in unprofessional conduct and that the Order set forth below may be entered by the Board.

ORDER

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. 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);
- ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
- iii. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public);
- iv. Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care);
- v. Rule Chapter 4, Rule IV, II, D. 3. (falsifying or altering clinical records or making inaccurate or misleading entries); and
- vi. Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

B. The Respondent has already provided to the Board an independent evaluation by a mental health provider and an independent evaluation by a licensed professional specializing in substance abuse. These reports indicate that 1) the Respondent does not have a diagnosis for substance abuse issues and 2) that she is fit to resume the practice of nursing and does not present a risk to the safety, health or welfare of her potential patients.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

C. The Board of Nursing hereby **CONDITIONS** Respondent's license for A **MINIMUM OF THREE YEARS** from the date of entry of this Order.
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 three (3) years of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks as a nurse. After a minimum of eighteen (18) months, the Respondent is free to petition the Board to modify and/or remove her conditions. 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. Respondent's license is additionally conditioned as follows:

(3) Completion of Mental Health Counseling and Treatment Plan.

Respondent shall enter into and continue mental health 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 no longer necessary. Respondent shall enter into and comply with the mental health 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 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.

(5) 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. The first report is due commencing the month after the date of the imposition of the conditions and subsequent reports are due every month thereafter.

(6) Reports from Employers.

Within one (1) month of the date of the imposition of the conditions and monthly thereafter, Respondent shall cause every employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's performance and attendance

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

during that month. This report shall be submitted in writing on forms issued by the Board.

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.

(8) Practice Under Supervision.

There is no Stipulation concerning this condition. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance.

(9) Interview with the Board or its designee.

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

(10) Administration of Medications.

Respondent shall only administer and/or have access to medications under direct supervision.

(11) Types of Employment Prohibited.

There is no Stipulation concerning this condition. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance.

(12) 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.

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

Within five (5) days of the date of the imposition of the conditions, 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. Respondent shall provide a copy of this Consent Order to all nursing employers, current and future, and shall inform them of the conditional status of her license.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

(14) 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 she has otherwise complied with the requirements for license renewal.

(15) Disclosure Form.

In fulfilling the conditions of this Order which require the Respondent to authorize various persons to report information or to discuss the Respondent with the Board, the Respondent must execute a consent to disclose form. The authorization must allow the information to also be provided to the Office of Professional Regulation investigators. The authorization must also allow the Board to review the file generated by the mental health treatment provider. However, the authorization shall only apply to information in the mental health treatment provider's file directly related to the Respondent's treatment and not to any personal issues.

(17) Costs.

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

(18) 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.

(19) 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. The Respondent must also present proof of successful mental health rehabilitation and she must demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a Registered Nurse. The Respondent may petition the Board to remove and/or modify the conditions as enumerated above after a minimum of eighteen (18) months. However, it shall be left to the sole discretion of the Board to remove and/or modify any condition before the three (3) year period as outlined in paragraph C(2) above has been completed.

D. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

E. This Stipulation and Consent Order is a matter of public record and may

STATE OF VERMONT



Prosecuting Attorney.
Office of
Professional Regulation
Montpelier, VT 05602

be reported to other licensing authorities as provided in 3 V.S.A. §129(b).

F. 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.

G. In respect to paragraphs C(5) and C(11), the parties have not reached a Stipulation. At the Stipulation Hearing the State is free to argue for what it feels is appropriate in this instance. Likewise, the Respondent is free to argue for what she feels is appropriate in this instance. In respect to these paragraphs the State and the Respondent agree to abide by the decision of the Board as to the appropriate conditions/sanctions. The State and the Respondent further agree that the decision of the Board shall be binding and final on the parties and that the parties will not contest the decision of the Board in any Forum.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 1/6/04

By: [Signature]

Edward G. Adria
State Prosecuting Attorney

VIRGINIA F. SWAIN
RESPONDENT

Dated: 1/15/04

By: [Signature]

Virginia F. Swain

Attorney for Respondent
Approved as to form:

Dated: 1/05/04

By: [Signature]

Peter F. Welch

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: Jan 12, 2004

By: [Signature]

Chamberson

Date of Entry 2/2/04

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STATE OF VERMONT



Prosecuting Attorney
Office of
Attorney General
Montpelier, VT 05602

STATE OF VERMONT
BOARD OF NURSING

IN RE:)
 Virginia Swain) Case File No. NU08-0703
 License No. 26-22406)

ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, January 12, 2004, at 81 River Street in Montpelier, Vermont. Board members Elayne Clift, Laurey Tyo, Sandra Norton, Donarae Metcalf, Susan Farrell, Linda Rice, Alan Weiss and De-Ann Welch participated in the decision. Edward Adrian, Prosecuting Attorney, appeared for the State. Virginia Swain ("the Respondent") was present, and was represented by Attorney Peter Welch.

The parties submitted a Stipulation and Consent Order for the Board's approval, but left two paragraphs open for argument and discussion, asking the Board to decide what would be appropriate. The two conditions were regarding supervision and are numbered (C)(8) and (C)(11) in the Stipulation at page 6. Paragraph (C)(8) addresses practice under supervision and paragraph (C)(11) addresses the types of employment prohibited.

Typically, in cases of substance abuse and/or diversion, the Board will require practice as follows:

Respondent shall practice only in a setting where the Respondent has on-site supervision for the entire shift by a Registered Nurse in good standing with the Board.

In those same cases, the Board will prevent certain types of employment which are unstructured and lack the necessary supervision to adequately protect the public. Language normally includes:

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 Order.

The Respondent argues in this case that because she has been evaluated by a treating professional who has determined she does not have a substance abuse problem and that her

diversion of morphine was in contemplation of committing suicide rather than due to an addiction or other personal use, the standard conditions regarding supervision would not be appropriate and would unnecessarily limit her employment options. The Respondent also proposed that she would subject any potential employment in an unstructured setting to Board approval.

After careful consideration, the Board rejected the Respondent's proposal. The Board finds that it is in the best interest of both the Respondent and the public that she remain in a structured setting with on-site supervision for the time being. It is important that the Respondent be closely supervised until such time as she has a proven track record with her mental health counseling and that she poses no danger to the practice of the profession and is not a risk to the public. The fact remains that she diverted morphine, for whatever reason. Thus, close supervision in a structured setting is appropriate.

The Respondent may petition the Board at any time for a modification of the conditions on her license and the Board will consider such petition in a timely manner.

Accordingly, the Board adopts the following as the conditions to be included and incorporated by reference in the Stipulation and Consent Order approved by the Board on January 12, 2004:

(8) Practice Under Supervision.

Respondent shall practice only in a setting where the Respondent has on-site supervision for the entire shift by a Registered Nurse in good standing with the Board.

(11) 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 Order.

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 24, 2004

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 7/2/04

STATE OF VERMONT
BOARD OF NURSING

In re: Virginia Swain
License No. 26-22406

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Docket No. NU08-0703

SUMMARY SUSPENSION ORDER

On September 8, 2003, this case came before the Board of Nursing for a hearing on the State's request for summary suspension.

Based upon the evidence presented by the parties, the Board finds that the allegations in the request for summary suspension have been established to the necessary degree. Therefore, the Board finds that the public health, safety, or welfare imperatively require emergency action against the Respondent's license.

Pursuant to 3 V.S.A. § 814(c), Respondent Virginia Swain's nursing license is SUMMARILY SUSPENDED until a hearing on charges has been held and determined, or other resolution of this case.

BOARD OF NURSING

By: Aileen Farrell
Chair

Dated: Sept. 8, 2003

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 9/9/03

Warren, VT

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

IN RE: VIRGINIA F. SWAIN, RN) DOCKET No. NU08-0703
License No. 026-0022406)

REQUEST FOR SUMMARY SUSPENSION

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.
2. The Board of Nursing is authorized by 3 V.S.A. § 814 to summarily suspend the license of a nurse when it finds that the public health, safety or welfare imperatively requires emergency action.

Statement of Facts

3. Virginia F. Swain (the "Respondent") of Warren, Vermont is a licensed registered nurse holding license number 026-0022406, issued by the State of Vermont. This license was originally issued on or about August 28, 1995 and is set to expire on March 31, 2005.
4. At all relevant times the Respondent was practicing as a registered nurse and worked at the Copley Hospital (the "Hospital") located in Morrisville, Vermont.
5. On or about July 17, 2003, the Respondent was terminated from employment at the Hospital.
6. Morphine is readily available for administration to patients at the Hospital in 2mg and 4 mg tubex doses.
7. On or about June 14, 2003, the Respondent removed 10 mg of Morphine and then wasted the same amount 7 minutes later.
8. On or about June 18, 2003, at 8:43 p.m., the Respondent removed 10 mg of Morphine to administer to patient D.A. Eight minutes later the Respondent administered 2 mg and wasted 8 mg. At 9:00 p.m. the Respondent indicated that she removed 10 mg of Morphine for patient D.A.. Respondent did not document how this Morphine was utilized.
9. On or about June 23, 2003, the Respondent removed 10 mg of Morphine to administer to patient D.A. at 6:08 p.m. Four minutes later the Respondent wasted the 10 mg of

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

Morphine.

10. On or about June 23, 2003, a physician ordered that an "on demand" 4mg dose of Morphine could be administered to patient H.P. The Respondent administered a 8 mg dose to the patient at 6:40 p.m. and a 5 mg dose to the patient at 7:20 p.m.
11. On or about June 26, 2003, the Respondent removed 10 mg of Morphine as noted in patient, R.G.'s event record. R.G.'s event record indicated that the 10 mg of Morphine was wasted 9 minutes later.
12. On or about June 27, 2003, the Respondent removed 10 mg of Morphine as noted in patient C.C.'s event record and recorded that she administered 2 mg and wasted 8 mg, 8 minutes later.
13. On or about June 28, 2003, the Respondent removed 10 mg of Morphine for patient B.D. The Respondent administered 4 mg of Morphine and wasted 6 mg.
14. On or about July 10, 2003, because of repeated inaccurate documentation problems of controlled medications, the Respondent entered into a "Narcotic Administration and Documentation Agreement with the Hospital. This Agreement called for the Respondent to utilize the smallest possible pre filled tubex, when administering IV medications. The Agreement also called for the Respondent to find another nurse to visually witness the "wasting" of any narcotic medications.
15. On or about July 15, 2003, the Respondent administered 2 mg of Morphine to patient H.B. and wasted 2 mg of Morphine.
16. On or about July 15, 2003, the Respondent administered Percocet to patient H.B. when the order called for the administration of Vicodin. The H.B.'s blood pressure dropped from 118/68 to 86/44 as a result of the medication error.
17. On or about August 6, 2003, the Respondent contacted Vada Aucter of the Vermont Board of Nursing and told Ms. Aucter that the Respondent was diverting Morphine from the Hospital. The Respondent further stated that the purpose for the Morphine diversion was that she was planning on committing suicide. The Respondent admitted to diverting 60-70 mg of Morphine.
18. On or about August 8, 2003 the Respondent informed Investigator Michael Colgan that she had "disposed of the Morphine that I had stolen for my suicide attempt."

Request for Relief

19. The facts as set out above establish that in order to protect the public health, safety or welfare of the people of the State of Vermont emergency action is imperative.
20. The above acts and circumstances, alone or in combination, violate: 3 V.S.A. § 129a(a) (3) (failing to comply with provisions of federal or state statutes or rules governing the

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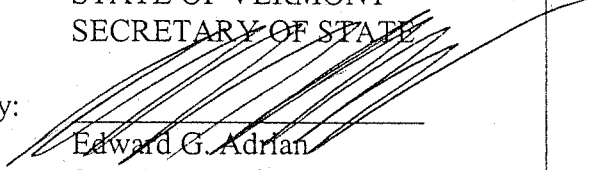
practice of the profession); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); Rule Chapter 4, Rule IV, II, D. 3.; (falsifying or altering clinical records or making inaccurate or misleading entries); and Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 026-0024192 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 3rd day of September, 2003.

STATE OF VERMONT
SECRETARY OF STATE

By:


Edward G. Adrian
State Prosecuting Attorney

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