

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

IN RE:

BARBARA ESTHER SWAN

License Nos. 026.0015938; 101.0015938

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Docket No. 2009-465

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Barbara Esther Swan, APRN, 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. Barbara Esther Swan (the "Respondent") of Burlington, Vermont is licensed by the State of Vermont as a Registered Nurse with Advanced Practice Registered Nurse Endorsement under license number 101.0015938. Respondent's endorsement is that of a Family Nurse Practitioner with Prescriptive Authority. This APRN license was originally issued on or about September 18, 1986 and is currently set to expire on or about March 31, 2011. Respondent has also been licensed by the State of Vermont as a Registered Nurse under license number 026.0015938. Respondent's RN license was originally issued on or about March 11, 1985 and lapsed on or about March 31, 1987.
3. Previously, Respondent's APRN license lapsed on or about March 31, 2009. Respondent's APRN renewal application (the "APRN Application") was not received by the Board until on or about September 28, 2009.
4. In her APRN Application, Respondent answered "Yes" to the statement, "I have practiced as a registered nurse as defined in 26 V.S.A. § 1576(c); Rules Ch. 4, Subch.

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2, Rules (III)(A), (VI)(A) and (B) for at least 50 days (400 hours) within the last 2 years or 120 days (960 hours) within the last five years.”

5. In her APRN Application, in response to the requirement that she provide information for “all RN and APRN employment within the last 2 years,” Respondent listed employment as a full-time “Chief Nursing Officer” at Marathon Health in Colchester, Vermont, with the dates of employment being “October 2005 – present.”
6. As required by the APRN Application, Respondent attached her current practice guidelines as an APRN. In these APRN practice guidelines, Respondent described her advanced nursing clinical practice in being Marathon Health’s Chief Nursing Officer. Respondent’s guidelines indicated that “[c]linically this role involves: . . . [o]ccasional patient care for training purposes of new nurse practitioners and physician’s assistants.” Respondent dated her practice guidelines September 24, 2009, and these practice guidelines were signed by collaborating physician Dr. R.P., as required by ARBN Chapter 4, Subchapter 8, Rule III(C)(6).
7. An investigation was then opened regarding Respondent because it appeared that, based on her APRN Application, Respondent had practiced as an RN and/or APRN for approximately six (6) months after allowing her license to lapse.
8. On or about July 14, 2010 in a letter to respond to a request for information from State Investigator Jeffrey Jones, Respondent advised that she has not practiced nursing or advanced practice nursing “since November of 2008.” Respondent advised she has provided no medical care or treatment since November 2008. Respondent advised that her nursing license lapsed in or around March 2009 and she forgot to renew and did so around six months later. Respondent stated that her position with Marathon Health is a corporate position and she does not need her license to perform her current position.
9. Pursuant to the job description of Marathon Health’s Chief Nursing Officer submitted to Investigator Jones, an RN is required.
10. On or about July 19, 2010 in an interview with Investigator Jones, when asked whether she believed she had practiced without a license during the time her license lapsed, since her job as Chief Nursing Officer required an RN, Respondent advised her belief that because she was not providing direct care to patients, she was not practicing as a nurse and therefore, there was no unlicensed practice violation. Respondent further advised that she is no longer the Chief Nursing Officer at Marathon Health; she is now Marathon Health’s Chief Clinical Officer.
11. Since her Chief Nursing Officer position required an RN license and Respondent was practicing in this position during the approximately six (6) months that her license lapsed, Respondent has violated 26 V.S.A. § 1584(a)(3).

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12. Respondent's APRN practice guidelines, submitted with the APRN Application and dated September 24, 2009, include "[o]ccasional patient care for training purposes of new nurse practitioners and physician's assistants." Respondent has stated that she has not performed any medical care or treatment since November 2008.
13. Pursuant to ARBN Chapter 4, Subchapter 8, Rule III(C)(5), the Board is required to be notified in writing of "any major changes in practice guidelines."
14. By failing to notify the Board that her position had changed from Chief Nursing Officer to Chief Clinical Officer, and that she was no longer providing advanced practice nursing care, Respondent has violated ARBN Chapter 4, Subchapter 8, Rule III(C)(5) and 3 V.S.A. § 129a(b)(2).

Charges

15. The act(s), omission(s), and/or circumstance(s) described above, if proven, would constitute grounds for discipline because the Respondent would have committed unprofessional conduct in violation of:
 - a. 26 V.S.A. § 1584(a)(3) (It shall be a violation of this chapter for any person, including a corporation, association, or individual, to practice nursing unless duly registered and currently licensed to do so under the provisions of this chapter);
 - b. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) which includes failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule 11(B)(2); and
 - c. 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

16. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove at least some of charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary and appropriate.
17. 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.

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18. 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.
19. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
20. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
21. 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.
22. 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.
23. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

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

- A. The Board of Nursing hereby **WARNS and CONDITIONS** Respondent's APRN endorsement **FOR A MINIMUM OF EIGHTEEN 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 **minimum of eighteen (18) months** of APRN practice in which she works at least thirty (30) hours every month as an APRN. Part time hours of less than thirty (30) hours every month shall be credited on a prorated basis.

(3) Notification to Employers/Nursing School.

During the conditional license period the 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 or APRN 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

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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 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 **quarterly** thereafter, Respondent shall cause her collaborating physician to submit an evaluation of the Respondent's work performance for the quarter. All collaborating physician reports shall indicate practice consistent with the current and Vermont Board of Nursing approved Practice Guidelines. All collaborating physician reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice).

(5) Out-of-State Practice.

Out of state APRN practice can not be credited toward fulfillment of these terms and conditions.

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.

(6) 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.

(7) 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 APRN 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.

(8) 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 an APRN, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise met the requirements for APRN endorsement.

(9) Costs.

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

(10) 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.

(11) 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. The Board of Nursing hereby **REPRIMANDS** Respondent's license to practice of registered nursing and requires **payment within thirty days of an administrative penalty in the amount of five hundred dollars.**
- C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- D. 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).
- E. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 3/3/2011

By: S. Lauren Hibbert
S. Lauren Hibbert
State Prosecuting Attorney

BARBARA ESTHER SWAN
RESPONDENT

Dated: 3/1/2011

By: Barbara Esther Swan
Barbara Esther Swan

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

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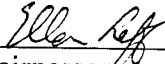
Dated: 3/3/2011

By: 
Pamela Coyne, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 4.11.11

By: 
Chairperson

Date of Entry: 4/12/11
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