

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

IN RE:)
DIANE L. UPDYKE) **Docket No. 2008-167 (NU87-0408)**
License No. 026.0027336)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Edward G. Adrian, and the Respondent, Diane L. Updyke, RN, who stipulate and agree as follows:

Board Authority

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

Statement of Facts

2. Diane L. Updyke (the "Respondent") of South Burlington, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0027336. This license was originally issued on or about July 9, 2002 and is currently set to expire on or about March 31, 2011.
3. At all times relevant, Respondent was employed as a Registered Nurse at Lund Family Center (the "Facility"), a 24-bed residential treatment facility for pregnant or parenting young women and their children, located in Burlington, Vermont.
4. At all times relevant, R.D. was a client of the Facility who was discharged on or about February 9, 2008.
5. On or about April 20, 2008 in a Statement of Complaint to the Office of Professional Regulation, Director of Residential Community Treatment Programs K.C. reported the following: When residential client R.D. was discharged from the facility on February 9, 2009, R.D. did not feel she could manage her own medication responsibly and requested that she be able to come to the facility to have her

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medication dispensed. Respondent made a decision to cease dispensing R.D.'s medication without consulting R.D.'s physician either before or after this decision.

6. On or about April 15, 2008 in Facility meeting minutes regarding this issue, it is documented that Respondent took this action due to a progression of R.D.'s inappropriate behavior at the Facility when R.D. would come to obtain her medication. In this meeting, Respondent admitted to not consulting R.D.'s doctor before or after dispensing the rest of R.D.'s medications and not notifying R.D.'s therapist that Respondent had dispensed the remainder of R.D.'s medication.

Charges

7. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:
 - a. 3 V.S.A. § 129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and
 - b. 3 V.S.A. § 129a(a)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession).

Understandings

7. 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 these charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary to protect the public.
8. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
9. Respondent 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.
10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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11. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
12. 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.
13. 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.
14. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

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

- A. The Board of Nursing hereby **CONDITIONS** Respondent's license to practice nursing **FOR A MINIMUM OF ONE (1) YEAR from the date of entry below.**
The conditions are as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time of 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 one (1) year** of supervised nursing practice in which she works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. **The Board shall determine at a disposition hearing the amount of hours per week that the Respondent shall be permitted to work, but shall allow the Respondent to work a minimum of 40 hours per week. The Respondent is free to convince the Board that she should be allowed to work more than 40 hours per week.**

(3) Legal Aspects Course(s).

Respondent must successfully complete (i.e., receive a passing grade, if applicable) a legal aspects course(s) focusing on medication administration and dispensing with prior approval by the Board or its designee, and then submit written documentation of completion (certificate of completion, etc.) to verify the same to the satisfaction of the Board or its designee. 2 NCSBN courses: Medication Errors: Detection & Prevention (6.9 contact hours) and Professional Accountability & Legal Liability for Nurses (5.4 contact hours) will satisfy this requirement. This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order.

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*Ordered:
no more than
96 hours in two
weeks, no more
than 12 hours in
any day.
JL

(4) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status.

Within ten (10) days of the date of entry of this Consent Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to 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 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 write to the Board, on school letterhead, 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.

(5) Reports from Employers/Program Director.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance and attendance.

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. All nursing program reports shall indicate satisfactory performance and attendance.

(6) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has on-site supervision for the entire shift by a licensed registered nurse that is in good standing with the Board. For purposes of this subsection, Respondent's on-site supervisor does not have to be Respondent's overall supervisor.

(7) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a private duty nurse or personal care provider during the effective period of this Consent Order.

(8) Out-of-State Practice.

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, none of the time spent practicing nursing out-of-state will be credited toward the fulfillment of the terms and conditions of this

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

(9) 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.

(10) Notification to Other States.

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

(11) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice as a nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(12) Costs.

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

(13) 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.

(14) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order.

- B. Notwithstanding any provision above, the Respondent must continue to meet all 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.

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AGREED TO:

Dated: 1-7-10

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature] for
Edward G. Adrian
State Prosecuting Attorney

DIANE L. UPDYKE
RESPONDENT

Dated: 1-6-10

By: [Signature]
Diane L. Updyke

APPROVED AS TO FORM:

Dated: 1-7-10

ATTORNEY FOR RESPONDENT:

By: [Signature]
Judy Barone, Esq.

APPROVED AND SO ORDERED:

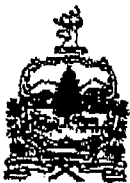
Dated: 1-11-10

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

Date of Entry: 1/12/2010
nu.updyke.sip3

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AGREED TO:

Dated: _____

Dated: 1-6-10

APPROVED AS TO FORM:

Dated: 1-7-10

APPROVED AND SO ORDERED:

Dated: _____

Date of Entry: _____
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SECRETARY OF STATE

By: _____
Edward G. Adrian
State Prosecuting Attorney

DIANE L. UPDYKE
RESPONDENT

By: Diane L. Updyke
Diane L. Updyke

ATTORNEY FOR RESPONDENT:

By: Judy Barone, Esq.
Judy Barone, Esq.

VERMONT BOARD OF NURSING

By: _____
Chairperson

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