

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re Mark Ward }
License No. 026-0028501 }
Docket No. NU 80-0605 }

DEFAULT ORDER

Upon the filing of a "Notice of Hearing for Default Judgment" by the Secretary of State, the Vermont Board of Nursing (the "Board") heard this matter on Monday 13 October 2008 at the Secretary of State's Office of Professional Regulation, in the National Life Building at Montpelier, Vermont.

Findings of Fact

1. Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129 and 129a; 26 V.S.A. Chapter 28; Administrative Rules for the Board of Nursing ("Nursing Rules") and the Administrative Rules for the Office of Professional Regulation ("OPR Rules"). Respondent's license expired during the pendency of these proceedings.
2. The State filed a Specification of Charges dated 23 June 2008 ("Charges"), which allege Respondent Mark Ward engaged in unprofessional conduct. The Charges allege the Respondent violated terms of a currently operative Board order conditioning the terms of Respondent's professional practice. *See* Charges (attached).
3. The Office of Professional Regulation served Respondent with notice of the charges via certified and first class mail at the address Respondent provided to OPR. Respondent is obligated to maintain a current mailing address with OPR and the Board. 3 V.S.A. §129a (14).
4. The notice of charges contained instructions detailing the Respondent's obligation as a licensee to answer the charges and explaining the legal consequences of failure to file a timely response. OPR also served a notice of this default hearing to the Respondent by certified mail.
5. The Respondent did not answer the charges within the legally prescribed time as required by OPR Rule 3.3 or at any time thereafter.
6. The Respondent did not appear for this default hearing.
7. Upon consideration of the State's presentation of the case and after taking official notice, pursuant to 3 V.S.A. § 810(4), of the contents of this matter's case file, which is maintained by the OPR Docket Clerk in accordance with

OPR Admin. Rules Part 3, the Board finds the Respondent to be in default for failure to answer the State's charges.

8. Finding the Respondent in default, the Board therefore treats the factual allegations contained in the State's specification of charges (copy attached) as proven, and those allegations will serve as the factual basis for the following order. OPR Rule 3.4; 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

9. The Respondent received adequate and legal notice of the charges as evidenced by OPR's contested case file and the State's presentation of the case to the Board. Because the Respondent failed to answer the charges of unprofessional conduct, the Board finds the Respondent in default and will treat the State's factual allegations as established pursuant to OPR Rule 3.4.
10. The Board concludes, in this default hearing held pursuant to 3 V.S.A. § 809(d), that the Respondent has engaged in unprofessional conduct as alleged by the State of Vermont.

ORDER

In accordance with the above findings of fact and conclusions of law and effective the date of entry of this order, the Board of Nursing ORDERS that the Respondent's privileges, if any, to renew his registered nursing license are SUSPENDED INDEFINITELY.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Linda Rice
Linda Rice, APRN
Board Chairperson

Dated: Montpelier, Vermont 13 October 2008

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/14/08

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing.

A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 within 30 days of the entry of the order.

For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can find at: <http://www.vtprofessionals.org/opr1/opr/admnrule.pdf> and the Rules are also available at the Office of Professional Regulation.

If you file an appeal, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The appellate officer will review the record (the tape recording, exhibits etc.) created before the board during the hearing of your case. In cases of alleged irregularities in procedure before the board, not shown in the record, proof related to that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

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

IN RE:

MARK D. WARD

License No. 026-0028501

)
)
)

Docket No. NU80-0605

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Mark D. Ward, R.N.:

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 ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Mark D. Ward (the "Respondent") of Franklin, New Hampshire is a registered nurse holding license number 026-0028501, issued by the State of Vermont. This license was originally issued on or about July 23, 2003 and expired March 31, 2007.
3. The Respondent's license is currently conditioned pursuant to a Stipulation and Consent Order (the "Order") entered by the Board on or about May 29, 2007. Attachment A.
4. On or about March 18, 2008, a certified letter receipt, signed by the Respondent, was received by Board Administrator Elizabeth Hansen. The certified letter requested that the Respondent contact Ms. Hansen regarding his plan to come into compliance with the conditions of his license.
5. Based on a review of the Board's records, the Respondent has failed to comply with terms of the Order and has had no contact with the Board since the Order was issued.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Charges

6. 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(a)(4) (failing to comply with an order of the board or violating any term or condition of a license restricted by the board); 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).

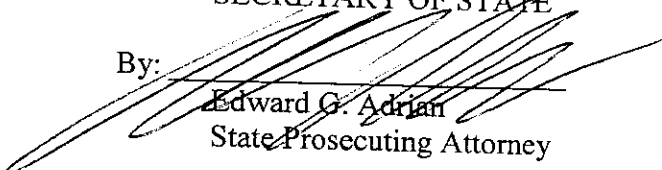
Relief Requested

WHEREFORE, the license of Mark D. Ward should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 23rd day of June, 2008.

STATE OF VERMONT
SECRETARY OF STATE

By:


Edward G. Adrian
State Prosecuting Attorney

nu.ward.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

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

IN RE:

MARK D. WARD

License No. 026-0028501

Docket No: NU80-0605

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Mark D. Ward, who stipulate and agree as follows:

Board Authority

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

Statement of Facts

2. The Respondent, Mark D. Ward, is licensed in the State of Vermont as a registered nurse under license number 026-0028501. This license was originally issued on or about July 23, 2003 and is currently set to expire on March 31, 2007. Mr. Ward's Vermont license is currently on inactive status.

3. At all times relevant, the Respondent was employed as a registered nurse at Porter Hospital (the "Hospital") located in Middlebury, Vermont.

4. Respondent was terminated from his employment at the Hospital on or about June 27, 2005.

5. On or about June 16, 2005, Respondent removed five (5) Percocet tablets for patient G.E. from the Pyxis machine at approximately 3:07 a.m. G.E.'s records do not show an order for Percocet. Furthermore, G.E. had been discharged at approximately 4:50 p.m. on June 15, 2005.

6. On or about June 25, 2005, Respondent removed six (6) Percocet tablets for patient B.C. from the Pyxis machine at approximately 2:17 a.m. B.C.'s records indicate a physician's order for four (4) Percocet; however, there is no documentation that any of the Percocet

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

removed by the Respondent was administered to B.C. B.C. was discharged on June 25, 2005 at approximately 2:35 a.m.

7. In an interview with State Investigator Brenda Tetrault conducted on or about October 10, 2005, Respondent acknowledged that he has poor documentation practices, but denied stealing any drugs.

8. Additionally, on Respondent's application for licensure in the State of Vermont dated July 23, 2003, Respondent answered "No" to the question "Have you been convicted of a crime other than a minor traffic violation?" In fact, Respondent pled guilty to and was convicted of DWI (misdemeanor) in Texas on or about June 26, 2001.

9. Finally, during the course of its investigation regarding the above outlined charges, the Office of Professional Regulation received information that on or about July 20, 2005, the Respondent was admitted to Maple Leaf Farm Associates, Inc., ("Maple Leaf") seeking treatment for alcohol, cocaine, and cannabis dependence.

10. The Respondent did not notify the Board that he had entered the Maple Leaf alcohol and substance abuse treatment program.

Charges

11. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

(i) 26 V.S.A. § 1582(a)(5) (is habitually intemperate or is addicted to the use of habit-forming drugs);

(ii) 3 V.S.A. § 129a(a)(1) (fraudulent or deceptive procurement or use of a license);

(iii) 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. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and

(iv) 3 V.S.A. § 129a(a)(3) (failing to comply with the provisions of state statutes or rules governing the practice of the profession).

Understandings

12. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.

13. 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.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

14. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.

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

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

17. 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.

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

19. 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 AND LIMITS THE RESPONDENT'S LICENSE FOR A PERIOD OF THREE (3) YEARS** pursuant to the Laws of the State of Vermont and the Rules of this Board. **THE PARTIES AGREE THAT THESE CONDITIONS SHALL BE APPLICABLE TO THE RESPONDENT REGARDLESS OF WHETHER HIS VERMONT LICENSE IS ON ACTIVE OR INACTIVE STATUS PURSUANT TO 3 V.S.A §814(d).** The conditions will be 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 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 registered nursing in which he works 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

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

and comply with the substance abuse treatment plan approved by the Board and the treating professional. The Board may accept the Respondent's prior completion of substance abuse counseling that occurred after July 20, 2005.

(4) Notification to Treating Professional.

If necessary, Respondent shall provide a copy of this Stipulation and Consent Order to his treating professional and cause his treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional.

If necessary, Respondent shall authorize and cause his treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.

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

(6) Notification to Employers/Nursing School.

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

Within fourteen (14) days of the date of entry of this Consent Order or of any 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.

(7) 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 his performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(8) Practice Under Supervision.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Respondent shall practice only in a registered nurse setting where Respondent has direct supervision for the entire shift by a registered nurse that is in good standing with his or her regulatory authority.

(9) Participation in Recovery Groups.

As necessary, the Respondent shall participate as recommended by his treating professional, in AA/NA meetings and/or other recovery group(s).

(10) 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.

(11) 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.(12) for the period of time described in paragraph A.(2).

(12) Drug Use Exception.

The Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medications if the term exceeds 14 days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication 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.

(13) Administration of Medications.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

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

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

(14) Interview with the Board or its Designee.

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

(15) Types of Employment Prohibited.

Respondent shall not work 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 during the effective period of this Consent Order.

(16) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall obtain approval from the Board. If Respondent fails to receive such approval, none of the time spent out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Consent Order.

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

Within fourteen (14) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of his 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.

(18) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), he must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

conditional status of his 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. **WITHIN THIS TIME PERIOD THE VERMONT BOARD OF NURSING MUST RECEIVE NOTIFICATION THAT THE OTHER STATES THAT THE RESPONDENT IS CURRENTLY LICENSED IN HAVE RECEIVED A COPY OF THE BOARD'S COMPLETE ORDER. A CERTIFIED MAIL RECIEPT FROM THE RESPONDENT SHALL BE SUFFICIENT TO SATISFY THIS CONDITION.**

(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 he 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 registered 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 his treatment provider may require him 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

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

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 his license. The Respondent must present proof that he has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and he must demonstrate, to the satisfaction of the Nursing Board, that he poses no danger to the public or the practice of nursing and that he can safely and competently perform the duties of a licensed practical 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.

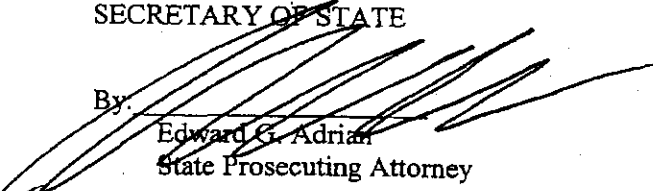
C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

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:

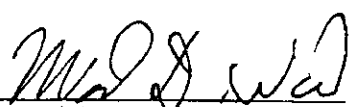
STATE OF VERMONT
SECRETARY OF STATE

Dated: 5/14/07

By: 
Edward G. Adrian
State Prosecuting Attorney

MARK D. WARD
RESPONDENT

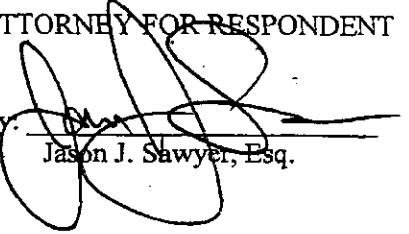
Dated: 5/14/07

By: 
Mark D. Ward

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 5/14/07

By: 
Jason J. Sawyer, Esq.

APPROVED AND SO ORDERED:
VERMONT BOARD OF NURSING

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Dated: May 14, 2007

Date of Entry: 5/29/07
nu.ward.stip5

By: Steven Farrell
Chairperson

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107