

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

IN RE:)
MICHELLE S. WARMAN) Docket No. 2008-391 (NU36-1008)
License No. 026.0021808)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney BetsyAnn Wrask, and the Respondent, Michelle S. Warman, 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 Alleged Facts

2. Michelle S. Warman (the "Respondent") of Newport Center, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0021808. This license was originally issued on or about September 22, 1994 and is currently set to expire on or about March 31, 2011.
3. At all times relevant, Respondent was employed as a Registered Nurse in the MedSurg Unit at North Country Hospital (the "Facility"), located in Newport, Vermont.
4. On or about October 24, 2008 in a Mandatory Report of Unprofessional Conduct, C.G., Nurse Director for the Facility's MedSurg Unit, stated that Respondent was terminated on or about October 6, 2008 due to poor clinical judgment and patient safety concerns. C.G. stated that at the time, Respondent was working under a Performance Improvement Plan specific to concerns about clinical judgment, decision-making, and timeliness. Moreover, C.G. reported three (3) "near miss" events resulting from Respondent's care that occurred on or about October 4, 2008.

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5. On or about February 23, 2009 in an interview with State Investigator Karl Packer, Respondent stated that she recently came back to the practice of nursing (after being out of the profession for over seven (7) years, due to the need to care for her child) by working as a nursing instructor and without the benefit of taking a re-entry course, which Respondent stated in hind sight would have been beneficial.
6. On or about March 23, 2009 in an interview with Investigator Packer, C.G. and Vice President of Patient Care Services S.W. stated that the Facility's concerns regarding Respondent were patient safety and basic nursing knowledge. Investigator Packer was informed that Respondent had time management issues.
7. On or about November 4, 2009 in a prehearing conference, Respondent's attorney indicated that Respondent may not be medically fit to practice nursing.
8. On or about December 3, 2009 in a letter to the Board, Respondent requested that her license status be changed to Inactive-Conditioned in order to settle this matter.

Charges

9. 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. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) which includes performance of unsafe or unacceptable patient care pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(1); and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Chapter 4, Subchapter 4, Rule II(B)(2);
 - b. 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
 - 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

10. 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 Orders below.

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11. 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.
12. 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.
13. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
14. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
15. 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.
16. 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.
17. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER A., REGARDING INACTIVE-CONDITIONED STATUS, RE-ENTRY PROGRAM, AND CONDITIONED LICENSE FOR THE DURATION OF RE-ENTRY PROGRAM

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

- A. The Board of Nursing hereby changes Respondent's registered nursing license status to **INACTIVE-CONDITIONED, commencing with the date of entry below.** Before applying for reinstatement as a registered nurse, Respondent must: 1) obtain an independent evaluation report by a licensed physician or APRN pre-approved by the Board regarding Respondent's medical and psychological condition; 2) the results of the report with the licensed physician or APRN regarding Respondent's medical and psychological condition must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients; 3) be enrolled in a Board-approved Re-Entry Program; and 4) successfully complete the classroom component of the Re-Entry Program and submit evidence of completion of the same to the satisfaction of the Board or its designee. Once these prerequisites are met, the Respondent shall be issued a **CONDITIONED LICENSE for the purpose of permitting limited practice as a registered nurse in a clinical setting to complete the clinical component of the Re-Entry Program FOR NINETY (90) DAYS.** In the case of extenuating circumstances, the Executive Director may grant an extension to allow the Respondent to complete the clinical component of the Re-Entry Program

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for a period of time not to exceed one (1) year. This conditioned license for the purpose of permitting limited practice as a registered nurse in a clinical setting to complete the clinical component of the Re-Entry Program shall be subject to the following conditions:

(1) Issue of Conditioned License.

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

(2) Length of Time of Conditions Imposed.

These conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to these conditions until Respondent successfully completes **limited practice in a clinical setting for ninety (90) days only for purpose of completing the Re-Entry Program**, that may be extended in cases of extenuating circumstances, but not to exceed one (1) year, according to the ARBN and/or guidelines for re-entry programs established by the Board.

(3) Notification to Program Director.

Respondent shall provide a copy of this Stipulation and Consent Order to the Program Director of Respondent's Re-Entry Program and inform the Program Director of Respondent's conditional license status.

Within ten (10) days of the commencement of the clinical component of the Re-Entry Program, Respondent shall cause Respondent's Program Director to write to the Board, on professional letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability of the Program Director to comply with the conditions in the Consent Order during clinical experience.

(4) Reports from Program Director.

Within one (1) month of the commencement of the clinical component of the Re-Entry Program and **monthly** thereafter, Respondent shall cause her Program Director to submit to the Board a written evaluation of Respondent's 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 Program Director reports shall indicate satisfactory performance and attendance.

(5) Practice Under Supervision.

Respondent shall practice under her conditioned license only in a setting where Respondent has direct supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board, and as according to the ARBN and/or guidelines for re-entry programs established by the Board.

(6) Interview with the Board or its Designee.

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

(7) Notification to Other States.

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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 Respondent's license reinstatement. 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 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.

(9) Costs.

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 Re-Entry Program.

After the completion of the Re-Entry Program, the Respondent may request that the conditions of her license be expanded as outlined in Order B. The Respondent must present proof that she has successfully completed the Vermont-approved Re-Entry Program and that she has fully complied with the terms of Order A.

ORDER B., REGARDING EXPANDED CONDITIONED LICENSE

- B. After successful completion of the Re-Entry Program as outlined above in Order A., and after Respondent successfully requests that her conditions be expanded as outlined herein in Order B, Respondent's license to practice registered nursing shall be **CONDITIONED FOR AN ADDITIONAL PERIOD OF A MINIMUM OF ONE (1) YEAR** from the date of granting the expansion of her conditions. The expanded conditions will be as follows:

(1) Length of Time of Expanded Conditions Imposed.

These conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes **one (1) year** of supervised registered nursing in which she 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.

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(2) 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 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, 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.

(3) Reports from Employers.

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 Program Director reports shall indicate satisfactory performance and attendance.

(4) Practice Under Supervision.

For the first six (6) months of this conditioned period, Respondent shall practice as a registered nurse only in a setting where Respondent has direct supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board.

If Respondent's employers and/or Program Directors submit satisfactory monthly reports regarding Respondent's performance and attendance during those six (6) months, thereafter Respondent shall practice as a registered nurse only in a setting where, at a minimum, Respondent has on-site supervision for the entire shift by a registered nurse that is licensed and in good standing with the Board.

(5) Types of Employment Prohibited.

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

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(6) Interview with the Board or its Designee.

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

(7) Out of State Practice.

Before any out-of-state nursing 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, none of the time spent practicing nursing out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state nursing practice so long as the Respondent can still comply with the provisions of this Consent Order.

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

Within five (5) days of the date of granting these expanded conditions, 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.

(9) Notification to Other States.

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

(10) License Renewal.

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

(11) Costs.

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

(12) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

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(13) Completion of Conditional License Period.

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

- 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:

Dated: 1-8-10

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Betsy Ann Wrask
State Prosecuting Attorney

MICHELLE S. WARMAN
RESPONDENT

Dated: 1/7/2010

By: [Signature]
Michelle S. Warman

APPROVED AS TO FORM:

Dated: 1-7-2010

~~ATTORNEY FOR RESPONDENT~~

By: [Signature]
Judy Barone, Esq.

APPROVED AND SO ORDERED:

Dated: _____

Date of Entry: _____
nu.warman.stip4

VERMONT BOARD OF NURSING

By: _____
Chairperson

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AGREED TO:

Dated: 1-8-10

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Betsy Ann Wrask
State Prosecuting Attorney

MICHELLE S. WARMAN
RESPONDENT

Dated: 1/7/2010

By: [Signature]
Michelle S. Warman

APPROVED AS TO FORM:

Dated: 1-7-2010

ATTORNEY FOR RESPONDENT

By: [Signature]
Judy Barone, Esc.

APPROVED AND SO ORDERED:

Dated: 1-11-10

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

Date of Entry: 1/13/2010
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