

**BEFORE THE MINNESOTA
BOARD OF NURSING**

In the Matter of
Shirley J. St. Germain, R.N.
a/k/a Shirley J. Vedder
License No. 73659-4

**STIPULATION AND
CONSENT ORDER**

STIPULATION

Shirley J. St. Germain, R.N. ("Licensee"), and the Minnesota Board of Nursing Review Panel ("Review Panel") agree the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

1. The Minnesota Board of Nursing ("Board") is authorized pursuant to Minnesota Statutes sections 148.171 to 148.285 to license and regulate registered nurses and to take disciplinary action as appropriate.

2. Licensee holds a license from the Board to practice professional nursing in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Consent Order.

II.

BACKGROUND

3. On November 10, 2009, a Review Panel composed of Doris Hill, Board member, and Mariclaire E. England, Nursing Practice Specialist for the Board, met to discuss allegations regarding Licensee made in a Notice of Conference dated October 15, 2009. Licensee did not attend the conference, but following subsequent contact with the Licensee, and a thorough review of all available information, the Review Panel determined the matter could be resolved by mail with a Stipulation and Consent Order for the revocation of Licensee's license to practice

professional nursing.

4. Licensee was advised by the Board's representatives that she may choose to be represented by legal counsel in this matter. Karen Andrews, Assistant Attorney General, represents the Review Panel in this matter.

III.

FACTS

5. The parties agree this Stipulation and Consent Order is based upon the following facts:

a. On April 30, 1994, Licensee's registration as a registered nurse expired. Licensee has not held current nursing registration in Minnesota since that date.

b. On December 10, 1997, the Board issued Findings of Fact, Conclusions, and a Final Order ("1997 Order"), which suspended Licensee's license to practice professional nursing for an indefinite period of time. The 1997 Order was based on Licensee's mental health, failure to maintain current registration, failure to appear at a prehearing conference and failure to cooperate with an investigation of the Board.

c. In November 2006 and in May 2007, the Board received information indicating Licensee, using the name "Shirley Vedder," was advertising "ear coning" services using the title of "nurse," although Licensee's nursing license remained suspended. By letter dated July 31, 2007, the Board informed Licensee it was unlawful to use any abbreviation or other designation tending to imply licensure as a nurse, unless duly licensed and currently registered to practice as such.

d. On August 8, 2007, the Minnesota Department of Health's ("MDH") Office of Unlicensed Complementary and Alternative Health Care issued a determination requiring Licensee to cease providing ear candling or ear coning services and all advertising which indicated Licensee was a nurse in Minnesota.

e. Licensee continued to advertise ear candling services, and continued to identify herself as a nurse. For example, in July 2008, an advertisement referred to Licensee as “Nurse Shirley Vedder.” Another advertisement identified Licensee as “Shirley Vedder (nurse).”

f. On October 15, 2009, the Board issued a Notice of Conference to Licensee regarding these issues. On October 29, 2009, Licensee contacted the Board and confirmed she had received the Notice of Conference. On October 30, 2009, the Board sent Licensee a letter encouraging Licensee to attend the conference and reiterating Licensee’s right to be represented by an attorney in the matter. On November 10, 2009, Licensee left a voicemail with Board staff stating she “is no longer a nurse.” Licensee did not attend the conference scheduled for that day.

g. In January 2010, Licensee contacted the Review Panel’s attorney and indicated she wanted to relinquish her license and has no plans to practice nursing.

IV.

LAWS

6. Licensee acknowledges the conduct described in section III. above constitutes a violation of Minnesota Statutes section 148.261, subdivision 1(6), (11), (18), (23), and (24), and justifies the disciplinary action described in section V. below.

V.

DISCIPLINARY ACTION

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

A. Revocation

7. The Board **REVOKES** Licensee's license to practice professional nursing. Licensee shall not engage in any act which constitutes the practice of nursing as defined in Minnesota Statutes section 148.171, shall not imply by words or conduct that Licensee is authorized to practice nursing, and shall not use the initial (“R.N.”) as a title.

8. Licensee shall surrender to the Board her license and nursing registration certificate. Licensee shall personally deliver or mail the license and certificate to the Minnesota

Board of Nursing, c/o Shirley A. Brekken, Executive Director, 2829 University Avenue S.E., Suite 200, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

B. Application for Relicensure

9. Licensee may apply for relicensure following 12 months from the date of this Order, and upon satisfactory demonstration to the Board of Licensee's qualifications and satisfaction of the requirements for licensure. At the time of Licensee's application, Licensee shall comply with, at a minimum, the following:

a. Reexamination, Licensure Application, and Licensure Fee. Licensee shall retake the National Council Licensure Examination for Registered Nurses ("NCLEX-RN"), submit a completed application for licensure, pay the licensure fee, and meet all other licensure requirements in effect at the time of application, including submission of evidence of a passing score on the NCLEX-RN.

b. Additional Information. Licensee shall provide any additional information relevant to her petition reasonably requested by the Review Panel. The Board will consider all competent evidence of rehabilitation presented to the Board upon Licensee's application for relicensure.

10. The Board may, at any regularly scheduled meeting following Licensee's application for relicensure pursuant to paragraph 9 above, take any of the following actions:

- a. Issue a license to Licensee;
- b. Issue a license to Licensee with limitations upon the scope of Licensee's practice and/or with conditions for Licensee's practice; or
- c. Deny Licensee a license based upon her failure to meet the burden of proof.

VI.

ADDITIONAL INFORMATION

11 Within ten days of execution of this Stipulation and Consent Order, Licensee shall provide the Board with the names of all states in which Licensee is licensed to practice professional or practical nursing or has applied for licensure as a registered or practical nurse.

12. Licensee waives the contested case hearing and all other procedures before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or rules.

13. Licensee waives any claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees, and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Consent Order, which may otherwise be available to Licensee.

14. This Stipulation and Consent Order, the files, records, and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

15. Either party may seek enforcement of this Stipulation and Consent Order in any appropriate civil court.

16. Licensee has read, understands, and agrees to this Stipulation and Consent Order and has voluntarily signed the Stipulation and Consent Order. Licensee is aware this Stipulation and Consent Order must be approved by the Board before it goes into effect. The Board may approve the Stipulation and Consent Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and Consent Order will take effect and the order as modified will be issued. If the changes are unacceptable to Licensee or the Board rejects the Stipulation and Consent Order, it will be of no effect except as specified in the following paragraph.

17. Licensee agrees that if the Board rejects this Stipulation and Consent Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board,

Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Consent Order or of any records relating to it.

18. This Stipulation and Consent Order shall not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Licensee which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

19. Any complaints or grievances concerning violations of Minnesota Statutes sections 364.01 to 364.10 shall be processed and adjudicated in accordance with the procedures set forth in Minnesota Statutes Chapter 14, the Administrative Procedure Act.

VII.

DATA PRACTICES NOTICES

20. This Stipulation and Consent Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy. While this Stipulation and Consent Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

21. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.

CONSENT:

BOARD OF NURSING
REVIEW PANEL

Shirley J. Vedda
SHIRLEY J. ST. GERMAIN
Licensee

Doris Hill
DORIS HILL
Board Member

Dated: Feb. 3, 2010

Dated: 2/4, 2010

ORDER

Upon consideration of the Stipulation, the Board REVOKES Licensee's license and adopts all of the terms described above on this 4th day of Feb, 2010.

The Board hereby Rescinds the 1997 Order which shall have no future force or effect.

MINNESOTA BOARD
OF NURSING

Shirley A. Brekken
SHIRLEY A. BREKKEN
Executive Director

I haven't worked as an RN in 16-17 years & have no intention of doing so. The MN Board of Nursing has never helped me. Back in 1979 when I was injured on the job I called you to ask for help. - None was received.

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**FINDINGS OF FACT,
CONCLUSIONS,
AND FINAL ORDER**

On July 22, 1997, the Minnesota Board of Nursing ("Board") Review Panel served a Notice of and Order for Prehearing Conference and Hearing ("Notice of Hearing") together with a Notice of Appearance upon Shirley J. St. Germain and Shirley Vedder ("Respondent") by first class mail to 3209 Hennepin Avenue, Minneapolis, Minnesota 55408, her last known address filed with the Board. The Notice of and Order for Prehearing Conference and Hearing addressed to Shirley Vedder was returned to the Board office by the U.S. Postal Service with a hand-written notation, "Return to Sender." The Notice of and Order for Prehearing Conference and Hearing addressed to Shirley St. Germain had not been returned to the Board office as of September 5, 1997.

The Notice of Hearing served on Respondent scheduled a prehearing conference for September 5, 1997. The Notice of Hearing contained the following language:

Respondent is hereby urged to attend; failure to do so may prejudice Respondent's rights in this proceeding and any subsequent proceedings related to this matter, may result in the allegations contained herein being taken as true, and may be the basis for disciplinary action against Respondent.

Respondent failed to appear at the prehearing conference, file a Notice of Appearance, or make any request for a continuance or any other relief.

On September 18, 1997, Administrative Law Judge Barbara L. Neilson ("ALJ") issued Findings of Fact, Conclusions of Law, and Recommendation in the above-entitled matter.

The Board convened to consider the matter on December 4, 1997, in conference room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Board member Olive Krahl did not participate in deliberations and did not vote in

the matter. Rene Panelli, Assistant Director, also did not participate in the Board's deliberations. Louis Hoffman, Assistant Attorney General, appeared and presented oral argument for the Board Review Panel. Respondent did not appear. Marcia K. Baran, Assistant Attorney General, was present as legal adviser to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding. Pursuant to Minnesota Rules 1400.6000, the allegations in the Notice of Hearing are taken as true and the Board hereby accepts the report of the Administrative Law Judge Barbara L. Neilson and adopts and issues the following Findings of Fact:

1. In April 1993, Respondent completed a reregistration application form and submitted it to the Minnesota Board of Nursing ("Board"). According to the employment history, Respondent indicated she worked as a professional nurse from April 27, 1992, until at least April 10, 1993, at John Alden Insurance Company, Minneapolis, Minnesota. Respondent also worked as a registered nurse auditor from 1976 to May 1991, at Metropolitan Mount Sinai Medical Center, Minneapolis, Minnesota. The Board records indicated Respondent's registration expired on July 31, 1982. Respondent failed to renew her registration prior to the expiration date.

2. The Board sent Respondent three letters requesting additional information. On September 22, 1993, the Board received Respondent's response. In Respondent's letter she explained that both positions listed on her application did not require a nursing license, although she identified them as nursing positions on the application.

3. By letter dated November 4, 1993, the Board notified Respondent of its decision to close this matter. Respondent was advised that she must maintain current registration of her license if she practiced nursing or presented herself to employers or clients as a professional nurse.

4. On April 30, 1994, Respondent's registration expired. In March 1995, Respondent applied for reregistration. However, she failed to submit the required verification of nursing employment.

5. On January 12, 1996, the Board received a telephone call from an individual who identified herself as Respondent's last nursing employer. The individual asked if Respondent's registration was current. The caller indicated Respondent was currently practicing as a nurse.

6. On January 16, 1996, the Board received information Respondent was continuing to work at John Alden Insurance Company. The Board was informed Respondent's position required her to have a nursing license.

7. On January 30, 1996, the following occurred:

a. At approximately 8:30 a.m., Respondent telephoned the Board and requested a copy of her current licensure be faxed to her employer. Respondent was informed her registration had expired on April 30, 1994, and she had not completed the requirements of reregistration.

b. Respondent spoke to another Board staff member about a notice mailed to her on July 19, 1995, regarding the requirements for the reregistration process. Respondent denied receiving the notice and questioned the address to which the notice was sent. Respondent then asked the Board staff member if she remembered the conversation in which she told her about her abusive husband, that she was leaving him, and provided a new address. The Board staff member stated no and Respondent replied, "How convenient." Respondent then stated she had to go as she could not handle the conversation. Respondent indicated she had just gotten out of a psychiatric unit and would call back.

8. On February 22, 1996, the Board received a report regarding Respondent's practice as a professional nurse, as follows:

a. On January 4, 1996, while at work at John Alden Life Insurance Company, Respondent was crying uncontrollably. Respondent indicated she was fearful for her life because of her ex-husband. Respondent stated she wanted to crawl into a hole and

never come out. Respondent also stated she had given her Prozac to her neighbor because she did not want it around.

b. Respondent's supervisor attempted to reach Respondent's counselor, but was unsuccessful. Respondent was taken to Hennepin County Medical Center's crisis center, where she was interviewed. Respondent decided not to be admitted to the inpatient program.

c. On January 5, 1996, Respondent had an appointment with a counselor.

d. On January 8, 1996, Respondent notified her employer she was being admitted to Abbott-Northwestern Hospital's inpatient program for depression.

e. Respondent was placed on a medical leave of absence.

9. By letters sent to Respondent on three occasions, the Board informed Respondent of a report regarding her nursing practice. The Board requested additional information from Respondent in order to review the allegations and evaluate her medical status. The third request was sent on May 29, 1996, by certified mail. Respondent failed to complete the authorization forms to obtain her medical records.

10. On May 12, 1997, the Board served Respondent with a Notice of Conference with Board of Nursing Review Panel ("Notice of Conference") scheduling a conference for June 24, 1997. On June 6, 1997, the Board reserved the Notice of Conference. Respondent failed to appear at the scheduled conference.

11. On July 22, 1997, a Notice of and Order for Prehearing Conference and Hearing in this matter was served upon Respondent by U.S. mail addressed to Shirley St. Germain and Shirley Vedder at 3209 Hennepin Avenue, Minneapolis, Minnesota 55408. This address is the last known address on file with the Board.

12. The Notice of and Order for Prehearing Conference and Hearing addressed to Shirley Vedder was returned to the Board office by the U.S. Postal Service with a handwritten notation, "Return to Sender." The Notice of and Order for Prehearing Conference and Hearing addressed to Shirley St. Germain had not been returned to the Board office as of September 5, 1997.

13. Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. Respondent did not appear at the prehearing conference scheduled for September 5, 1997, or have an appearance made on her behalf.

14. Because Respondent failed to appear at the prehearing conference in this matter, she is in default. Pursuant to Minn. Rules 1400.6000 (1995), the allegations contained in the Notice of and Order for Prehearing Conference and Hearing are hereby taken as true and incorporated into these Findings of Fact.

CONCLUSIONS

Based upon the foregoing Findings of Fact, the Board accepts the report of the Administrative Law Judge Barbara L. Neilson and makes the following Conclusions:

1. The Board has jurisdiction in this matter pursuant to Minnesota Statutes sections 14.50, 148.261, 148.262, subdivision 1, and 214.103.

2. The Board gave proper notice of the prehearing conference and hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rules.

3. Respondent is in default herein under Minnesota Rules 1400.6000 as a result of her failure to appear at the prehearing conference.

4. Under Minnesota Rules 1400.6000, the allegations contained in the Notice of Hearing may be taken as true or deemed proved without further evidence when a party fails to appear at the prehearing conference.

5. Under Minnesota Rules 1400.7300, subpart 5, the Board Review Panel has the burden of establishing the statutory violations charged by a preponderance of the evidence. As a result of Respondent's default, the Board Review Panel has met its burden of proof.

6. The Board has authority to take disciplinary action against licensed professional nurses, including Respondent, under Minnesota Statutes sections 148.261 and 148.262.

7. Respondent's actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other

material, or as a result of any mental or physical condition constitutes a violation of Minnesota Statutes section 148.261, subdivision 1(8) 1996).

8. Respondent's violation of a rule adopted by the Board, an order of the Board, or a state or federal law relating to the practice of professional or practical nursing, or a state or federal narcotics or controlled substance law constitutes a violation of Minnesota Statutes section 148.261, subdivision 1(17) (1996).

9. Respondent's failure to cooperate with an investigation of the Board as required by section 148.265 constitutes a violation of Minnesota Statutes section 148.261, subdivision 1(21) (1996).

10. As a result of the statutory violations set forth above, the Board has the power to take disciplinary action against Respondent as set forth in Minnesota Statutes section 148.262.

ORDER

Based on the foregoing Findings of Fact and Conclusions and upon the recommendation of the ALJ, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respondent as a professional nurse in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time. Respondent shall not petition for reinstatement until at least one year from the date of this Order.

2. IT IS FURTHER ORDERED that during the period of suspension Respondent shall not engage in any conduct which constitutes the practice of professional nursing as defined in Minnesota Statutes section 148.171 and shall not imply to any persons by words or conduct that Respondent is licensed to practice nursing in the State of Minnesota.

3. IT IS FURTHER ORDERED that Respondent surrender to the Board her nursing registration renewal certificate. Surrender shall be accomplished by delivering personally or by certified mail said certificate to the Minnesota Board of Nursing, c/o Joyce M. Schowalter, Executive Director, 2829 University Avenue S.E., Suite 500, Minneapolis, Minnesota 55414, within five days after receipt by Respondent of this Order.

4. IT IS FURTHER ORDERED that when Respondent petitions for reinstatement of her license, she shall meet with a Board Review Panel. The Review Panel shall determine what evidence Respondent must present to the Board upon petitioning for reinstatement, which may include, but is not limited to, the following:

a. A response from Respondent to each separate incident set forth in the Findings of Fact.

b. A report from Respondent's supervisor(s), if any, during the twelve months immediately preceding petition, addressing:

- 1) Respondent's ability to carry out assigned functions;
- 2) Respondent's ability to handle stress; and
- 3) Any other information the supervisor believes would assist the

Board in its ultimate review of this matter.

c. A report from Respondent herself addressing:

- 1) Respondent's employment, if any;
- 2) Respondent's future plans for nursing;
- 3) Evidence that Respondent has maintained the knowledge, skills,

and ability to practice professional nursing safely; and

4) Any other information Respondent believes would assist the Board in its ultimate review of this matter.

d. A report from a licensed mental health professional who has completed a mental health evaluation within 90 days of the date of Respondent's petition for reinstatement. Respondent must undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Respondent shall submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. Respondent is responsible for the cost of the evaluation; however, the results shall be sent directly to the Board and shall provide and address:

- 1) Verification the evaluator has reviewed a copy of this Findings of Fact, Conclusions, and Final Order;
- 2) Diagnosis and any recommended treatment plan;
- 3) Recommendations for additional evaluation or treatment; and
- 4) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

5. IT IS FURTHER ORDERED that Respondent shall meet all reregistration requirements in effect at the time of her petition, including but not limited to, completing the appropriate application, payment of the requisite fees and completing any necessary continuing education requirements.

6. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 148.262, subdivision 4, when Respondent petitions for reinstatement of her professional nurse license, she must pay to the Board the total costs of the proceedings which resulted in the suspension of her license, including the costs paid by the Board to the Office of Administrative Hearings and to the Attorney General's Office for legal services and costs of the reproduction of the hearing record. The total costs of the proceedings are \$1,035.20.

7. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 148.262, subdivision 1(6), when Respondent petitions for reinstatement of her professional nurse license, she must pay to the Board a civil penalty to discourage repeated violations in the amount of \$1,500.00. The civil penalty shall be paid by cashier's check or money order made payable to the Minnesota Board of Nursing and shall be delivered personally or by certified mail to the Minnesota Board of Nursing, c/o Joyce M. Schowalter, Executive Director, 2829 University Avenue S.E., Suite 500, Minneapolis, Minnesota 55414.

8. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute violation of a Board order for purposes of Minnesota Statutes section 148.261, subdivision 1(17), and provide grounds for further disciplinary action.

9. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of her license and her meeting with a Board Review Panel, take any of the following actions:

- a. Reissue a registration certificate to Respondent;
- b. Reissue a registration certificate to Respondent conditional upon further reports to the Board and limitations placed upon the scope of Respondent's practice; or
- c. Continue the suspension of Respondent's license upon her failure to meet the burden of proof.

Dated: 12/10, 1997

STATE OF MINNESOTA

BOARD OF NURSING


JOYCE M. SCHOWALTER
Executive Director