

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

In re: NORA KENNEDY	}	
License No. 026.0131225	}	Docket No. 2021-47
	}	

FINDINGS AND ORDER

Participating Board Members:

Matthew Choate, RN
Kelly Sinclair, LNA
William Floyd, RN
Jennifer Lyon, RN
Deborah Belcher, Public Member
Luana Tredwell, LPN
Daniel Coane, Public Member
Ginger Gillete-Kent, APRN
Krystal Bernier, LPN

Appearances:

Prosecuting the case: Jennifer B. Colin, Esq., who participated electronically.
Respondent: participated electronically and was represented by Robert H. Backus, Esq.

Presiding Officer:

George K. Belcher

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

This matter came before the Board of Nursing on Specification of Charges dated 17 May, 2021 which is labelled Exhibit 1 and attached hereto. The hearing was held electronically on May 8, 2023, with the Attorneys, the Respondent, the witness and the Board members all participating by telephone or via electronic means pursuant to the Office of Professional Regulation Rules.

Findings of Fact

Based on the evidence presented at the hearing, the pleadings, and the arguments of counsel, the Vermont Nursing Board finds as follows:

1. Respondent was licensed as a Registered Nurse (RN) in the State of Vermont. The Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.

2. The prosecutor has filed a Specification of Charges. All of the charges were admitted by the Respondent in her amended answer dated January 5, 2023. A copy of the Specification of Charges is attached to this Decision and Order as Exhibit 1. The alleged facts set forth in the Specification of Charges are deemed admitted and proven.
3. The Respondent participated in the hearing and there were no objections to notice.
4. The parties were unable to agree upon a sanction and the matter was presented to the Board for a determination of the appropriate sanction.
- 5.

Conclusions of Law

1. The pleadings and evidence presented shows facts which justify a finding of unprofessional conduct by the Respondent and specifically violations of : first, 3 VSA Sec. 129a(a)(5) [Practicing the profession when medically or psychologically unfit to do so]; second, 26 VSA Sec. 1582(a)(3) [Engaging in conduct of a character likely to deceive, defraud or harm the public]; third, 3 VSA Sec. 129a(a)(15) [Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession]; fourth, 3 VSA Sec. 129a(b)(1) [Failure to practice competently including performance of unsafe or unacceptable patient or client care]; and fifth, 3 VSA Sec. 129a(a)(1) [Fraudulent or deceptive procurement of a license]. The Board finds these statutes were violated.
2. The license of the Respondent is currently under suspension by a previous stipulation to indefinite suspension.
3. Pursuant to the findings and conclusions above, the Board does order as follows.

Order

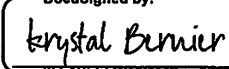
1. The indefinite suspension of the Respondent's license is continued until the Respondent petitions for reinstatement and the Board has reinstated her license.
2. Prior to seeking reinstatement, the Respondent shall petition for reinstatement. Within forty-five (45) days of requesting reinstatement, Respondent must, at her own cost:
 - (a) Obtain an independent evaluation report by a pre-approved licensed professional specializing in drug and alcohol abuse ("Independent Evaluator") who has verified receipt of this Order. The results of the Independent Evaluation must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients, as well as any recommendations that would ensure that the Respondent is safe to practice. The evaluation must be submitted to the Enforcement Unit Case Manager;
 - (b) Submit to the Enforcement Unit Case Manager the results of a minimum of three (3) random drug and alcohol screens:
 - (i) When Respondent is ready to petition for reinstatement, Respondent shall contact the Enforcement Unit Case Manager at the Office of Professional Regulation to set-up the drug and alcohol screen process and receive instructions. Once registered with the pre-approved person or entity, Respondent will have 45 days to submit to a minimum of three (3) random drug and alcohol screens. The process by which Respondent learns whether the Respondent is selected to provide a sample on any given day

- will be governed by the policy of the pre-approved person or entity conducting the testing at that time;
- (ii) The drug and alcohol screens must be collected in an observed setting, administered by a pre-approved person or entity, and analyzed by a pre-approved lab qualified to analyze samples for forensic purposes, the result of which shall be negative;
 - (iii) Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a drug or alcohol screen in any way shall cause that screen to be presumed positive; and
- (c) If recommended by an Independent Evaluator, the respondent must enter into a treating professional agreement and substance abuse treatment plan with a pre-approved treating professional(s) and follow all recommendations. If treatment is recommended, Respondent must submit a treating professional agreement to the Enforcement Unit Case Manager before a reinstatement request will be considered.

If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms are reasonable at the time of Respondent's reinstatement request taking into account the independent evaluation, the drug and alcohol screen results, the facts contained in this Order, and any other relevant factors at that time.

SO ORDERED.

Vermont Board of Nursing

By: 
Krystal Bernier, LPN
Vice Chair

Date: 5/11, 2023

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/12/23

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing or Director of the Office of Professional Regulation. A party aggrieved by a final decision of a board or hearing authority may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 89 Main Street, Fl. 3, Montpelier, VT 05620-3402 within 30 days of the entry of this order. If an appeal is filed, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The review shall be conducted on the basis of the record created before the board. In cases of alleged irregularities in procedure before the board, not shown in the record, proof on 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:	)	
NORA K. KENNEDY	)	Docket No. 2021-47
License No. 026.0131225	)	

ANSWER TO SPECIFICATION OF CHARGES

Comes now the Respondent, Nora K. Kennedy, and makes this answer to the Specification of Charges dated May 17, 2021 and filed that day.

- ¶ 1. Admitted.
- ¶ 2. Admitted.
- ¶ 3. Admitted.
- ¶ 4. Admitted.
- ¶ 5. Admitted.
- ¶ 6. Admitted.
- ¶ 7. Admitted.
- ¶ 8. Admitted.
- ¶ 9. Admitted.
- ¶ 10. Admitted.
- ¶ 11. Admitted.
- ¶ 12. Admitted.
- ¶ 13. Admitted.
- ¶ 14. Admitted.

¶ 15. Admitted.

¶ 16. Admitted.

¶ 17. Admitted.

¶ 18. Admitted.

¶ 19. Admitted.

¶ 20. Admitted.

¶ 21. Admitted.

¶ 22. Admitted.

¶ 23. Admitted.

¶ 24. Admitted.

¶ 25. Admitted.

¶ 26. Admitted.

¶ 27. Admitted.

¶ 28. Admitted.

¶ 29. Admitted.

¶ 30. Admitted.

¶ 31. Admitted.

¶ 32. Admitted.

¶ 33. Admitted.

Violation One:

¶ 34. No further response required. See previous answers.

¶ 35. Admitted.

¶ 36. Admitted.

¶ 37. Admitted.

Violation Two:

¶ 38. No further response required. See previous answers.

¶ 39. Admitted.

¶ 40. Admitted.

¶ 41. Admitted.

Violation Three:

¶ 42. No further response required. See previous answers.

¶ 43. Admitted.

¶ 44. Admitted.

¶ 45. Admitted.

Violation Four:

¶ 46. No further response required. See previous answers.

¶ 47. Admitted.

¶ 48. Admitted.

¶ 49. Admitted.

Violation Five:

¶ 50. No further response required. See previous answers.

¶ 51. Admitted.

¶ 52. Admitted.

¶ 53. Admitted.

Respectfully submitted this 5th day of January 2023.

A handwritten signature in cursive script, reading "Robert H. Backus". The signature is written in black ink and is positioned above a horizontal line.

ROBERT H. BACKUS
ATTORNEY FOR RESPONDENT
NORA KENNEDY

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

IN RE:)
NORA K. KENNEDY) **Docket No. 2021-47**
License No. 026.0131225)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Nora K. Kennedy:

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. Chapter 28; the Administrative Rules of the Board of Nursing (the “ARBN”); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Nora K. Kennedy (“Respondent”) of North Bennington, Vermont, is registered in the State of Vermont as a Registered Nurse under license number 026.0131225. This license was first issued on June 16, 2017, and expired on March 31, 2021.
3. Respondent began working in the intensive care unit (“ICU”) of the Southwestern Vermont Medical Center (the “Facility”) on December 29, 2020.
4. Respondent worked an overnight shift on the evening of March 3, 2021 into March 4, 2021.
5. During her March 3rd through March 4th shift, Respondent had several abnormal and concerning interactions with staff at the Facility.
6. ICU nurses are typically assigned to a small number of specific patients during their shift.
7. Respondent often asked to be assigned to patients with a high level of sedation.
8. On the night of March 3rd, the patient in room 281 was receiving Dilaudid through a patient-controlled analgesia (PCA) pump. The medication is accessed through a locked chamber that requires a key to open. Access to the medication panel must be witnessed by a second nurse.

9. Dilaudid is a controlled substance, also known as hydromorphone.
10. Respondent was not assigned to the patient in room 281, although she asked several times on the night of March 3rd to be assigned to that patient.
11. Sometime before midnight on March 3, 2021, Respondent approached the coworker who was assigned to the patient in room 281, asking for the key to the Dilaudid pump for room 281.
12. Respondent claimed that the pump was alarming and immediate action was needed.
13. Shortly after Respondent was given the key, staff found respondent in room 281 with the PCA pump open and the medication removed from the machine.
14. Respondent told staff that the pump was blocked and medication was not getting to the patient, but staff did not find a blockage. Staff eventually had to assist Respondent with restarting the pump.
15. Later that same night, Respondent was found on the floor of a patient's bathroom, kneeling in front of the toilet with blood on the floor and a tourniquet on the floor next to her.
16. Respondent offered at least two different explanations for why she was on the floor in a patient's bathroom, including that she fell and that she had her period.
17. Respondent refused to complete an injury report and there was no visible blood anywhere on Respondent's person other than on the tourniquet.
18. Sometime before midnight and after she was found on the floor in a patient's bathroom, Respondent entered the kitchen area of the ICU with a bloody tourniquet sticking out of the chest area of her scrubs as if she had tried stuffing the tourniquet down the front of her top.
19. When asked by staff about the bloody tourniquet hanging out of her scrubs, Respondent indicated she had just started an IV on a patient.
20. When Respondent was confronted by staff about her behavior on March 3, 2021, staff asked to see Respondent's arms. Respondent had needle marks on both arms in the anterior elbow areas.
21. One of the needle marks was bleeding.
22. Respondent told staff that a needle mark on one of her arms was from a blood draw, but offered no explanation for the other needle marks.
23. Respondent was eventually terminated from the facility a few days later.
24. Respondent is also licensed as a Registered nurse in New York under license number 615757.

25. In 2013, Respondent was disciplined for diverting Dilaudid several times between 2010 and 2013. Respondent's New York RN license was suspended and then eventually placed on probation through the Professional Assistance Program with the requirement that she complete treatment, drug testing, and supervised practice, among other conditions.
26. Respondent eventually successfully completed the Professional Assistance Program.
27. In 2017, Respondent was hired at the Northshire Medical Center, a part of the Southwestern Vermont Medical Center network.
28. When asked to explain her New York Discipline, Respondent told human resources that she had been wrongly accused of diversion but she was young and naïve and when she took a drug test to clear her name, it came up positive for marijuana. Respondent went on to explain that her license was suspended and eventually placed on probation only because of the marijuana.
29. On March 25, 2021, Respondent submitted a renewal application to the Office of Professional Regulation.
30. Respondent answered "No" to the question, "Does a dependency on alcohol, drugs, or prescription medication(s) impair or limit your ability to practice this profession with reasonable skill and safety?"
31. This answer was false.
32. Respondent also answered "No" to the question, "Are you currently addicted to or any way dependent on alcohol or habit-forming drugs? If yes, you must provide a detailed written explanation."
33. This answer was false.

Violation One: 3 V.S.A. §129a(a)(5) Practicing the profession when medically or psychologically unfit to do so.

34. The State re-alleges and incorporates Paragraphs 2 through 33 above.
35. As a Registered Nurse, Respondent shall only practice when she is medically or psychologically fit to do so.
36. Paragraphs 2 through 33 above demonstrate Respondent practiced the profession of nursing while medically or psychologically unfit to do so.
37. 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 3 V.S.A. §129a(a)(5).

Violation Two: 26 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

- 38. The State re-alleges and incorporates Paragraphs 2 through 33 above.
- 39. As a Registered Nurse, Respondent is prohibited from engaging in conduct of a character likely to deceive, defraud, or harm the public.
- 40. Paragraphs 2 through 33 above demonstrate Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public.
- 41. 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 26 V.S.A. §1582(a)(3).

Violation Three: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

- 42. The State re-alleges and incorporates Paragraphs 2 through 33 above.
- 43. As a Registered Nurse, Respondent is required to exercise independent professional judgment in the performance of licensed activities.
- 44. Paragraphs 2 through 33 above demonstrate Respondent failed to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
- 45. 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 3 V.S.A. §129a(a)(15).

Violation Four: 3 V.S.A §129a(b)(1) 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.

- 46. The State re-alleges and incorporates Paragraphs 2 through 33 above.
- 47. As a Registered Nurse, Respondent has an obligation to provide safe and acceptable patient care.
- 48. Paragraphs 2 through 33 above demonstrate that Respondent provided unsafe and unacceptable patient care.
- 49. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(1).

Violation Five: 3 V.S.A. §129a(a)(1) Fraudulent or deceptive procurement or use of a license.

- 50. The State re-alleges and incorporates Paragraphs 2 through 33 above.
- 51. As a Registered Nurse, Respondent shall not fraudulent or deceptively procure or use a license.
- 52. Paragraphs 2 through 33 above demonstrate that Respondent fraudulently or deceptively procured or used a license.
- 53. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(1).

Relief Requested

WHEREFORE, the Registered Nurse license of Nora K. Kennedy should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED this 17th day of May, 2021.

STATE OF VERMONT
SECRETARY OF STATE

By: /s/ Elizabeth A. St. James
Elizabeth A. St. James
State Prosecuting Attorney
Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620
P: (802) 828-1218
F: (802) 828-2389
elizabeth.st.james@vermont.gov