

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

IN RE:)
Brandy Haymaker) **Docket No. 2022-168**
License No. 026.0139466)

Participating Board Members:

Jennifer Lyon, RN
Luana Tredwell, LPN
Matthew Choate, RN
Thomas Harvey, RN
William "Jamie" Floyd, RN, Acting Chair
Kelly Sinclair, LNA
Deb Belcher, Public Member
Daniel Coane, Public Member
Jeanine Carr, RN, *ad hoc* member

Appearances:

Prosecutor: Rachel Heath, Esq.
Respondent: Edward Adrian, Esq.

Presiding Officer: George K. Belcher

Exhibits:

State Exhibit 1: Email G. Mitchell to Kristen Donnelly 12/13/22
Respondent Exhibit A: Redacted Forensic Report, Gary Mitchell, October 2022
Respondent Exhibit B: Purdue University Grade Report
Respondent Exhibit C: Written statement of Respondent 12/10/21
Respondent Exhibit D: Letter from Emma Kopecky, APRN, 2/6/23

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter came before the Board of Nursing on February 13, 2022. The parties stipulated to the facts, the violations, and most of the Order excluding conditions 6 and 8. The Board took evidence on the issue of the appropriate language to be included in paragraphs 6 and 8 of the following Order. Upon the stipulation of the parties and the evidence presented, the Board makes the following findings, conclusions and Order:

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; 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 (“OPR”).

Stipulated Facts

2. Brandy Haymaker (“Respondent”) of Barre, Vermont is licensed as a Registered Nurse (“RN”) under license number 026.0139466. The State of Vermont first issued this license on June 26, 2019, and the license expires on March 31, 2023.
3. At all relevant times, Respondent was an RN at Mayo Healthcare (“Facility”) in Northfield, Vermont.
4. On December 9, 2021, Respondent removed medications from the medication cart that were supposed to be returned to the pharmacy.
5. Instead of returning these medications, Respondent placed 38 Keflex 500mg capsules and four Augmentin 500-125mg tablets into a brown unlabeled prescription-type bottle that was unlike the bottles used at the Facility.
6. Respondent also cut a strip of eight Amoxicillin 500mg capsules from a pre-packaged card and removed the name label from the medication card.
7. Respondent placed the bottle of medications and strip of capsules into the top drawer of the medication cart with the intention of removing them from the Facility at the end of her shift.
8. Before removing the medications from the Facility, Respondent changed her mind and left them in the top drawer of the medication cart.
9. When the medications were discovered and she was asked about them, Respondent admitted she had taken them with the intention of diverting them.
10. When asked why she had taken them, she stated she was attempting to get off her antidepressant medication that she had been taking for several years and felt that this must have been affecting her mental state.
11. As a result of Respondent’s attempted diversion, her employment at the Facility was terminated.

Violation One: 26 V.S.A. § 1582(a)(2) Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

12. Paragraphs 2 through 11 are incorporated herein.
13. Under Vermont law, an RN is prohibited from diverting or attempting to divert drugs or equipment or supplies for unauthorized use.
14. Paragraphs 2 through 11 above demonstrate that Respondent attempted to divert drugs when she placed 38 Keflex 500mg capsules and four Augmentin 500-125mg tablets into a brown unlabeled prescription-type bottle and cut a strip of eight Amoxicillin 500mg capsules from a pre-packaged card and removed the name label from the medication card with the intention of removing these medications from the Facility.
15. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 26 V.S.A. § 1582(a)(2).

Violation Two: 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 profession.

16. Paragraphs 2 through 11 are incorporated herein.
17. Under Vermont law, an RN must exercise independent professional judgment in the performance of licensed activities when such judgment is necessary to avoid action repugnant to the profession.
18. Paragraphs 2 through 11 above demonstrate that Respondent failed to exercise independent professional judgment in the performance of licensed activities when such judgment is necessary to avoid action repugnant to the profession when she took medications that were to be returned to the pharmacy intending to remove them from the Facility.
19. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(a)(15).

ORDER

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

- A. The Board of Nursing hereby **REPRIMANDS** Respondent's license.
- B. The Board of Nursing hereby **CONDITIONS** Respondent's license commencing with the date of entry of this Stipulation and Final Order. The conditions will be as follows:

1. Re-issuance of License. Upon the commencement of these conditions, Respondent shall be issued a license labeled “conditioned.”
2. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
3. Length of Time of Conditions Imposed. Respondent shall be subject to the conditions for a **minimum period of one year** and until Respondent has fully completed all conditions as ordered.
4. Monitoring. The Office of Professional Regulation, through the Enforcement Case Manager, shall be responsible for monitoring Respondent’s compliance with these Conditions. All reports or correspondence regarding compliance with these conditions shall be submitted to the Case Manager in accordance with the Conditions listed below.
5. Mental Health Counseling. Respondent shall enter into a treating professional agreement and engage in individual mental health counseling with a pre-approved counselor (“Treating Professional”), until the Treating Professional certifies in writing that such counseling is no longer necessary and Respondent successfully petitions the Board for a modification of these conditions. The Treating Professional must hold an active, unencumbered license, registration, and/or certification by the State of Vermont as a Psychologist, Social Worker, Marriage & Family Therapist, Advanced Practice Registered Nurse, or Clinical Mental Health Counselor.

Respondent shall cause the Treating Professional to submit to the Case Manager, on forms the Case Manager provides, acknowledgement of receipt of this Stipulation and Final Order along with Respondent’s treatment plan.

Respondent shall cause the Treating Professional to submit monthly reports to the Case Manager, on forms the Case Manager provides. Respondent shall authorize the Treating Professional to provide all information the Board or its designee requests during the period this Final Order is in effect.

If Respondent is prescribed medications as part of her mental health counseling and treatment, Respondent’s monthly treating professional reports must also indicate her current dosage and whether she is appropriately taking the medication as prescribed. Respondent must continue to take such medication as prescribed until the Treating Professional certifies in writing that the medication is no longer necessary. Should Respondent’s medications be monitored by someone other than her Treating Professional, Respondent shall cause the prescribing provider to certify in writing, at intervals determined by the Case Manager, whether Respondent is appropriately taking the medication as prescribed. Respondent must continue to take such medications as prescribed until the prescribing provider

certifies in writing that such medication is no longer necessary.

6. Practice Under Supervision. Respondent shall practice as a nurse only in a setting where Respondent has on-site supervision. On-site supervision means the supervising nurse is present in the same facility or is available by phone or other electronic means if the supervisor is not on-site during the entire shift.
7. Reports from Employers/Program Director. Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. In the event 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 Respondent's performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (i.e., consistently meeting all standards of nursing practice) and attendance.
8. Types of Employment Prohibited. While practicing as an RN the 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 this final order.
9. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
10. Out-of-State Practice. Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board or its designee. The Board will approve out-of-state nursing practice so long as Respondent can still comply with the provisions of this Final Order. If Respondent receives discipline on a nursing license held in another state during the conditioned period, Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.
11. Notification to Employers/Nursing School. Respondent shall provide a copy of this Stipulation and Final Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Final Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Final Order and the ability to comply with the conditions in the Final Order.

In the event Respondent is attending a nursing program that has a clinical portion

that involves actual patient care, Respondent shall provide a copy of the Stipulation and Final Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Final Order and the ability of the program to comply with the conditions in the Final Order during clinical experience.

12. Notification of Place of Employment/Personal Address/Telephone Number.

Within ten (10) days of the date of entry of this Final Order, Respondent shall notify the Board, in writing, of Respondent's 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 (including resignation or termination), personal address, or telephone number.

13. Notification to Other States. If Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.

14. Required Coursework. Respondent shall, at her own expense and within ninety (90) days of the date of entry of this Stipulation and Final Order, successfully complete (i.e., receive a passing score, if applicable) eight hours of pre-approved coursework on ethics, medication management, and scope of practice. The coursework must be pre-approved by the Enforcement Case Manager.

Respondent shall submit the certificates of completion, completed assignment book(s) and quiz results, if applicable, to the Enforcement Case Manager. Failure to satisfactorily complete the courses within the prescribed timeframe shall constitute a violation of this Order. The coursework may not be counted toward any continuing education requirement of licensure.

15. Costs. Respondent shall bear all costs of complying with this Final Order.

16. Violation of this Order. If Respondent violates this Order the Board, after giving 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 Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

17. Completion of Conditional License Period. Respondent shall submit a petition to the Docket Clerk to remove any and all conditions on Respondent's license. The State will assent to or oppose Respondent's petition. The Board will conduct a hearing if necessary. Respondent bears the burden and must present proof that Respondent has fully complied with the terms of this Order and these conditions are no longer necessary to protect the public.

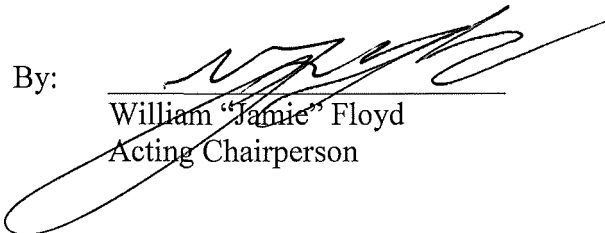
- C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- D. This Stipulation and Final Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).
- E. This Stipulation and Final Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 2/27/23

By:


William "Jamie" Floyd
Acting Chairperson

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 2/27/2023

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.

11. Denied as stated.

Allegation One:

12. Ms. Haymaker re-states and incorporates Paragraphs 2 through 11 above.

13. This allegation states a legal conclusion to which no responsive pleading is required.

14. This allegation states a legal conclusion to which no responsive pleading is required.

15. This allegation states a legal conclusion to which no responsive pleading is required.

Allegation Two:

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18. This allegation states a legal conclusion to which no responsive pleading is required.

19. This allegation states a legal conclusion to which no responsive pleading is required.

Affirmative Defenses

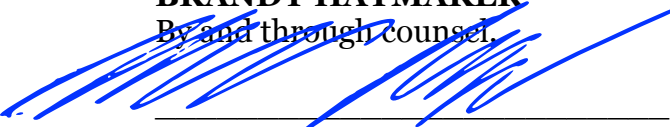
A. Preparation does not constitute attempt.

- B. Failure to State a Claim other than an abandoned attempt to take antibiotics.
- C. Untimeliness.
- D. Truth.
- E. Duplicative charging on same factual information.
- F. Laches.
- G. Mistake.

WHEREFORE, Ms. Haymaker PRAYS that the Board of Nursing consider her complete history as an RN and respond appropriately.

Dated at Burlington, Vermont this 9th day of September, 2022.

Respectfully Submitted,
BRANDY HAYMAKER
By and through counsel,



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**STATE OF VERMONT
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IN RE:)
BRANDY HAYMAKER) **Docket No. 2022-168**
License No. 026.0139466)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following charges against Registered Nurse Brandy Haymaker:

Board Authority

1. 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 (“OPR Rules”).

Statement of Facts

2. Brandy Haymaker (“Respondent”) of Barre, Vermont is licensed as a Registered Nurse (“RN”) under license number 026.0139466. The State of Vermont first issued this license on June 26, 2019, and the license expires on March 31, 2023.
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6. Respondent also cut a strip of eight Amoxicillin 500mg capsules from a pre-packaged card and removed the name label from the medication card.
7. Respondent placed the bottle of medications and strip of capsules into the top drawer of the medication cart with the intention of removing them from the Facility at the end of her shift.
8. Before removing the medications from the Facility, Respondent changed her mind and left them in the top drawer of the medication cart.

STATE OF VERMONT



Prosecuting Attorney
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9. When the medications were discovered and she was asked about them, Respondent admitted she had taken them with the intention of diverting them.
10. When asked why she had taken them, she stated she was attempting to get off her antidepressant medication that she had been taking for several years and felt that this must have been affecting her mental state.
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Violation One: 26 V.S.A. § 1582(a)(2) Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

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19. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(a)(15).

Relief Requested

WHEREFORE, the State of Vermont respectfully requests that the Board warn, reprimand, suspend, revoke, limit, condition, or otherwise discipline Brandy Haymaker's Registered Nurse license.

DATED at Montpelier, Vermont this 23rd day of June 2022.

STATE OF VERMONT
SECRETARY OF STATE

By: /s/ Rachel Heath
Rachel Heath
State Prosecuting Attorney
Enforcement Unit
(802) 828-0041
Rachel.Heath@vermont.gov

STATE OF VERMONT



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