

State of Vermont
Vermont Board of Nursing

In re: Heather Carey
License Number: 026.0121276
Docket Number: 2022-227

Order to Remove Conditions

On April 10, 2023, the Vermont Board of Nursing considered Heather Carey's request for Removal of Conditions imposed pursuant to a Stipulation & Consent Order under Docket Number 2022-227. Ms. Carey has met the conditions. After review of the follow-up file, the State does not object to removal of all conditions.

Order:

The Board hereby removes all conditions from Heather Carey's RN license.

Vermont Board of Nursing

DocuSigned by:

Jennifer Laurent

EB1744015710477

Jennifer Laurent, Chair

Date: April 10, 2023

Date of Entry:

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

IN RE:)
Heather C. Carey) Docket No. 2022-227
License 026.0121276)

**STATE'S RESPONSE TO RESPONDENT'S REQUEST TO MODIFY
CONDITIONS**

After review of the compliance file, the State has no objection to Respondent's request to modify conditions on his license.

Attached to this response is a proposed Order should the Board decide to grant Respondent's request.

Respectfully submitted, this 27 day of March 2023.

**STATE OF VERMONT
SECRETARY OF STATE**

By:


George Lloyd Hasselback
State Prosecuting Attorney
802-828-0350
george.hasselback@vermont.gov

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
89 Main Street
3rd Floor
Montpelier, VT
05620-3402

From: David Cleary
To: SOS - Docket Clerk
Cc: Hasselback, George; Donnelly, Kristin; Garcia, Laticia
Subject: Re: 2022-227 Heather Carey
Date: Tuesday, March 14, 2023 11:49:23 AM
Attachments: image001.png

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Received, thank you. as per your previous directives, and the order, and I specifically paragraph C, now that Heather has completed the required coursework mentioned in paragraph B Dash three, we would like to petition to remove any or all conditions from the license and show our full compliance with the order. do you wish a separate petition or will you consider this the petition to remove the conditions?

A copy of this correspondence is going to attorney George Hasselback.

Thank you for your attention to this request, and for forwarding a copy of the executed order.

Very truly yours, David and Cleary Esq

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From: SOS - Docket Clerk <sos.docketclerk@vermont.gov>
Sent: Tuesday, March 14, 2023 10:52:17 AM
To: David Cleary <dlc2@clearyshahi.com>
Cc: Hasselback, George <George.Hasselback@vermont.gov>; Donnelly, Kristin <Kristin.Donnelly@vermont.gov>; Garcia, Laticia <Laticia.Garcia@vermont.gov>
Subject: 2022-227 Heather Carey

Dear Attorney Cleary,

Enclosed please find the Stipulation and Consent Order on the above case.

Thank you.

Julie Bowen

Docket Clerk

Vermont Secretary of State | Office of Professional Regulation

OPR Website: <https://sos.vermont.gov/opr/>

Online Services: <https://sos.vermont.gov/opr/online-services/>



Understandings

7. Respondent admits the facts as outlined above are true and the Board may find that the Respondent engaged in unprofessional conduct and that the order below is necessary to protect the public.
8. Respondent understands that the 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.
9. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced Respondent's rights to a fair and impartial hearing if this agreement is not accepted by the Board and proceeds to a contested hearing.
10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
11. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
12. 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.
13. Respondent voluntarily waives Respondent's right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
14. 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 **REPRIMANDS** Respondent's license.
- B. The Board of Nursing hereby **CONDITIONS** Respondent's license commencing with the date of entry of this Stipulation and Consent Order:
 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.

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3. **Required Coursework.** Respondent shall, at her own expense and within ninety (90) days of the date of entry of this Stipulation and Consent Order, satisfactorily complete the following pre-approved courses:

- i. Patient Privacy (offered by NCSBN),
- ii. and Upholding the Standard: Professional Accountability in Nursing (offered by NCSBN).

*Respondent must provide satisfactorily completed workbooks and certificates of completion to the Case Manager.

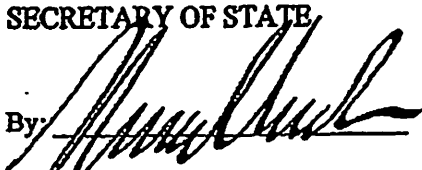
**Coursework may not be counted toward any continuing education requirement of licensure.

- C. Upon compliance with and completion of all required conditions, Respondent must petition to remove any or all conditions from the license and demonstrate full compliance with the Order.
- D. Notwithstanding any provision above, Respondent must continue to meet all requirements to maintain licensure, for license renewal, and for license reinstatement.
- E. 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).
- F. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be considered relative to any future disciplinary matter.

AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 02/21/2023

By: 

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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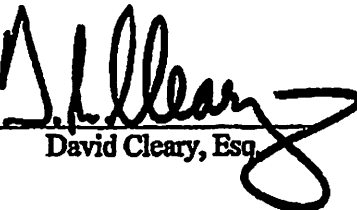
Dated: 2/13/23

By: 
Heather Carey.

APPROVED AS TO FORM ONLY:

David Cleary, ESQ.
ATTORNEY FOR RESPONDENT

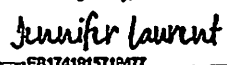
Dated: Feb. 17, 2023

By: 
David Cleary, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 3/13/23

DocuSigned by:
By: 
FR1743815712477
Chairperson

Date of Entry: 3/14/23

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

**IN RE:
Heather Carey**

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Docket No. 2022-227

RESPONSE TO SPECIFICATION OF CHARGES

NOW COMES Heather C. Carey, by and through her attorney, David L. Cleary, Esq. of the firm of Cleary, Shahi & Aicher, P.C., and responds to the State's Specification of Charges as follows:

Board Authority

1. Board authority is generally admitted.

Statement of Facts

2. Generally admitted.
3. Generally admitted.
4. Generally admitted.
5. Currently without information and belief, and therefore currently denied,

subject to proof.

6. Admitted on information and belief.
7. Currently without information and belief, and therefore currently denied,

subject to proof.

8. Currently without information and belief, and therefore currently denied,

subject to proof.

9. If access is proven, the allegations in Paragraph 9 are generally admitted.

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10. Generally admitted.
11. Currently without information and belief, and therefore currently denied, subject to proof.
12. Currently without information and belief, and therefore currently denied, subject to proof.
13. Currently without information and belief, and therefore currently denied, subject to proof.
14. Currently without information and belief, and therefore currently denied, subject to proof.
15. Currently without information and belief, and therefore currently denied, subject to proof.
16. Currently without information and belief, and therefore currently denied, subject to proof.
17. Currently without information and belief, and therefore currently denied, subject to proof.
18. Currently without information and belief, and therefore currently denied, subject to proof.
19. Currently without information and belief, and therefore currently denied, subject to proof.
20. Currently without information and belief, and therefore currently denied, subject to proof.

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21. Currently without information and belief, and therefore currently denied, subject to proof.

22. Generally admitted.

Violation one: 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.

23. Admitted, denied, or nontraversable as above stated.

24. Generally admitted.

25. Generally admitted.

26. Generally admitted.

27. Generally admitted.

28. Currently without information and belief, and therefore currently denied, subject to proof.

29. If proven as alleged, generally admitted.

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 obligations of the profession

30. Admitted, denied, or nontraversable as above stated.

31. Allegation or assertion of a duty, which currently is nontraversable, but it is asserted that the Respondent exercised appropriate judgment given the circumstances prevailing at the time.

32. Admitted, denied, or nontraversable as previously asserted.

leary Shahi & Aicher

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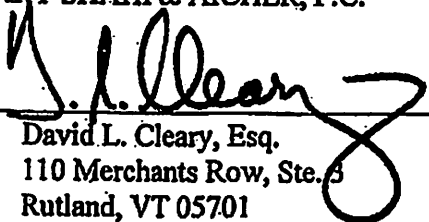
(802) 773-8800

33. Unprofessional conduct is currently denied, subject to proof. Respondent asserts that she exercised independent and reasonable professional judgment, given the circumstances existing at the time.

WHEREFORE, Respondent requests the opportunity to review any and all evidence or proof that will be proffered by the State in this case, and to thereafter amend the responses herein provided, and/or to assert additional affirmative defenses and/or justifications as may be necessary.

Dated this 22nd day of December, 2022.

CLEARY SHAHI & AICHER, P.C.

By: 

David L. Cleary, Esq.
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dlc@clearyshahi.com
Attorneys for Heather Carey

cc: George Lloyd Hasselback, Esq.

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

**IN RE:
Heather Carey**

Docket No. 2022-227

**ATTACHMENT A TO RESPONDENT'S
RESPONSE TO SPECIFICATION OF CHARGES**

1. **Undisputed Facts.** See previous responses to the individual paragraphs of the Specification of Charges.

2. **Disputed Issues of Fact.** See previous responses to the Specification of Charges as previously referenced, and note that Respondent has reserved the right, after examination of evidence and/or proof referenced by the State in their assertions, to amend her responses, depending upon the nature and extent of her recall of the circumstances at the time.

3. **Legal Defenses.**

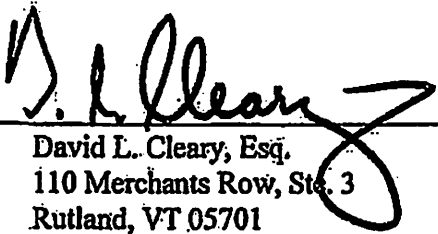
A. Respondent does not have a specific recall of many of the "facts" alleged in the specification of charges.

B. Lack of intent to violate any professional conduct rules or HIPAA requirements.

C. As previously indicated, Respondent reserves the right to amend the affirmative and/or legal defenses herewith submitted after full opportunity to examine and review the documentary or other proof, or evidence collected by or in the possession of the State.

Dated this 22nd day of December, 2022.

CLEARY SHAHI & AICHER, P.C.

By: 

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Attorneys for Heather Carey

cc: George Lloyd Hasselback, Esq.
Kristin Donnelly, Case Manager

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

**In re: Heather C. Carey
License no. 026.0121276**

Docket No. 2022-227

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont (the "State") and makes the following charges against Registered Nurse, Heather C. Carey:

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. Heather C. Carey ("Respondent"), of Danville, Vermont, is licensed as a Registered Nurse ("RN") under license number 026. 0121276. The State of Vermont first issued this license on June 16, 2016, and it expires on March 31, 2023.
3. During the relevant time period, Respondent was employed as an RN by Northern Counties Health Care ("the Facility").
4. At various times relevant to this matter, Respondent worked as an RN at both the St. Johnsbury Community Health Center and Northern Express Care-St. Johnsbury, both operated by the Facility.
5. On or about December 13, 2021, a patient at the Facility, D.S. ("Patient 1"), called to report that a third-party had received text messages that contained Patient 1's personal medical information including a list of medication that Patient 1 was currently taking and a list of testing/procedures that Patient 1 had recently undergone.
6. The Facility conducted an audit of Respondent's medical record access logs to determine whether Respondent had ever accessed Patient 1's medical file.
7. The audit conducted by the Facility showed that on or about December 1, 2021, Respondent accessed the electronic medical records of Patient 1, from approximately 09:07 until 09:13.

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8. The records that Respondent accessed included the summary and medication tab of Patient 1's records.
9. This access of Patient 1's records was not tied to any action in Patient 1's chart (open orders, medication refill, phone note, appointment, etc.) and was conducted at a physical location different from the physical location at which Patient 1 had received treatment.
10. At no time was Respondent involved in Patient 1's care and had no legitimate reason to access Patient 1's medical records.
11. The Facility continued to audit Respondent's chart access.
12. The audit showed that on or about October 4, 2021, Respondent accessed the electronic medical records of a patient of the Facility, MB ("Patient 2"), from approximately 10:20 until 10:30. The records the Respondent accessed included Patient 2's Summary Page, and documents associated with Patient 2's medical treatment.
13. At no time was Respondent involved in Patient 2's care and had no legitimate reason to access Patient 2's medical records.
14. The audit showed that on or about November 17, 2021, Respondent accessed the electronic medical records of a patient of the Facility, DB ("Patient 3") from approximately 10:15 until 10:47. The records the Respondent accessed included Patient 3's Summary Page, Patient 3's medication information, and documents associated with Patient 3's medical treatment.
15. At no time was Respondent involved in Patient 3's care and had no legitimate reason to access Patient 3's medical records.
16. The audit showed that on or about December 1, 2021, Respondent accessed the electronic medical records of a patient of the Facility, FT ("Patient 4"), from approximately 12:41 until 12:42. The records the Respondent accessed included a confidential behavior health telephone visit note.
17. At no time was Respondent involved in Patient 4's care and had no legitimate reason to access Patient 4's medical records.
18. The audit logs showed that on or about December 6, 2021, Respondent accessed the electronic medical records of a patient of the Facility, GM ("Patient 5"), from approximately 03:07 until 03:11. The records the Respondent accessed included Patient 5's Summary Page, flowsheet, and documents associated with Patient 5's medical treatment.
19. At no time was Respondent involved in Patient 5's care and had no legitimate reason to access Patient 5's medical records.

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20. The audit logs showed that on or about December 15, 2021, Respondent accessed the electronic medical records of a patient of the Facility, MM ("Patient 6"), at approximately 0128. The records the Respondent accessed included Patient 6's Summary Page, Patient 6's problem list, and Patient 6's medication information.

21. At no time was Respondent involved in Patient 6's care and had no legitimate reason to access Patient 6's medical records.

22. Respondent's employment was terminated by the Facility on December 22, 2021.

Violation One: 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.

23. The State re-alleges and incorporates Paragraphs 2 through 22 above.

24. Respondent is required to comply with provisions of federal or State statutes or rules governing the practice of the profession.

25. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is a federal law which states that a covered entity may not use or disclose a patient's protected health information for a purpose other than treatment, payment, or health care operations of the Facility, except when the individual authorizes or as law requires. *See* 45 C.F.R. § 164.502; 18 V.S.A. § 1881 (the Vermont Statute incorporating HIPAA protections).

26. A "covered entity" would include Respondent in her capacity as a health care provider working at the Facility. *See* 45 C.F.R. § 160.103.

27. The definition of "use" includes "examination" of individually identifiable health information. *See id.*

28. Paragraphs 2 through 22 demonstrate that Respondent violated 45 C.F.R. §164.502 and 18 V.S.A. §1881 by accessing and examining the confidential medical records of Patients 1, 2, 3, 4, 5, and 6 without any legitimate reason for doing to.

29. 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)(3).

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 obligations of the profession.

30. The State re-alleges and incorporates Paragraphs 2 through 22 above.

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31. As an RN, Respondent is required to exercise her own independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
32. Paragraphs 2 through 22 demonstrate that Respondent failed to exercise independent professional judgment by accessing and examining the confidential medical records of Patients 1, 2, 3, 4, 5, and 6 without any legitimate reason for doing to.
33. 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 revoke, suspend, condition, or otherwise discipline Respondent's Registered Nurse License.

DATED at Montpelier, Vermont this 26th day of October, 2022.

**STATE OF VERMONT
SECRETARY OF STATE**

By: _____

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