

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

IN RE:	)	
Heather A. Benson	)	Docket No. 2022-3
License No. 025.0131939	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Rachel Heath, and Respondent Heather A. Benson, who hereby 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; 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. Heather A. Benson (“Respondent”) of Bellows Falls, Vermont is licensed as a Licensed Practical Nurse (“LPN”) under license number 025.0131939. The State of Vermont first issued this license on July 31, 2017, and the license expires on January 31, 2022.
3. At all relevant times, Respondent was an LPN at Brattleboro Retreat (“Facility”) in the Hub Program.
4. From February 15, 2019 through April 25, 2019, Respondent provided outpatient nursing care to a male patient (“Patient”) for substance use disorder at the Facility.
5. Respondent knew Patient from their childhood and was friends with his family.
6. A few days before Patient began treatment at Brattleboro Retreat, Respondent and Patient messaged each other over Facebook Messenger.

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7. After Respondent began providing nursing care to Patient at the Facility, she informed Patient over Facebook Messenger that they needed to keep their relationship professional.
8. Respondent provided nursing care to Patient almost daily at the Facility and never asked a coworker or her supervisor to dose Patient.
9. During the time she provided nursing care to Patient, Respondent spent time with Patient outside of work.
10. During the time she provided nursing care to Patient, Respondent had sex with Patient.
11. During the relevant time, Respondent failed to inform her supervisor she knew Patient, was spending time with him in a personal relationship, and had had sex with him.
12. After Patient ceased his treatment at the Facility, Respondent looked through his medical records without a reason related to his treatment.
13. Respondent's and Patient's relationship continued after he was no longer a patient. Patient moved in with Respondent shortly after he stopped treatment at the Facility.
14. The Facility terminated Respondent's employment on July 8, 2019, citing Interpersonal Boundaries Violations.

Violation One: 26 V.S.A. § 1582(a)(11) Sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient, surrogates, or key third parties.

15. Paragraphs 2 through 14 above are incorporated herein.
16. Under Vermont law, an LPN is prohibited from engaging in sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient.
17. Paragraphs 2 through 14 above demonstrate that Respondent engaged in sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient.
18. 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)(11).

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Violation Two: 3 V.S.A. § 129a(a)(3) Failure to comply with provisions of federal or State statutes or rules governing the practice of the profession, incorporating 45 C.F.R. § 164.502 and 18 V.S.A. § 1881.

19. Paragraphs 2 through 14 above are incorporated herein.
20. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) is a federal law that prohibits a health care provider from accessing or using 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.
21. Paragraphs 2 through 14 above demonstrate that Respondent violated federal law by accessing Patient’s electronic medical record after Patient ceased treatment at the Facility without authorization or a permitted purpose.
22. Vermont statute 18 V.S.A. § 1881, the state law incorporating HIPAA protections, prohibits a “covered entity,” which includes Respondent as a health care provider, from disclosing protected patient health information. Under HIPAA, the definition of “disclosure” includes “provision of access to.”
23. Paragraphs 2 through 14 above demonstrate that Respondent violated Vermont law by accessing Patient’s electronic medical record without authorization or a permitted purpose.
24. 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)(3), incorporating 45 C.F.R. § 164.502 and 18 V.S.A. § 1881.

Violation Three: 3 V.S.A. § 129a(a)(26) Sexually harassing or exploiting a patient, client, or consumer, or doing so to a coworker in a manner that threatens the health, safety, or welfare of patients, clients, or consumers; failing to maintain professional boundaries, or violating a patient, client, or consumer’s reasonable expectation of privacy.

25. Paragraphs 2 through 14 above are incorporated herein.
26. Under Vermont law, an LPN is prohibited from sexually exploiting a patient, failing to maintain professional boundaries, or violating a patient’s reasonable expectation of privacy.
27. Paragraphs 2 through 14 above demonstrate that Respondent engaged in sexually exploiting a patient and failing to maintain professional boundaries by engaging in a sexual relationship with a patient.

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28. Paragraphs 2 through 14 above demonstrate that Respondent violated a patient's reasonable expectation of privacy by accessing Patient's medical records after his treatment ceased without a valid purpose related to his treatment.
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)(26).

Violation Four: 3 V.S.A. § 129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice.

30. Paragraphs 2 through 14 above are incorporated herein.
31. Under Vermont law, an LPN must practice competently by conforming to the essential standards of acceptable and prevailing practice.
32. As an LPN, Respondent is subject to the standards of acceptable care and prevailing practice, which requires an LPN to maintain professional boundaries with patients and refrain from engaging in a sexual relationship with patients.
33. Essential standards of acceptable and prevailing practice require an LPN to consult with her nurse supervisor when a potential conflict arises with a patient.
34. Essential standards of acceptable and prevailing practice prohibit an LPN from engaging in sexual or romantic conduct with a chemical dependency patient for a period of at least two years after terminating nursing services due to the unique vulnerability of such patients.
35. Paragraphs 2 through 14 above demonstrate that Respondent failed conform to the essential standards of acceptable and prevailing practice when she engaged in a sexual relationship with a chemical dependency patient and when she failed to consult with her supervisor regarding the potential conflict.
36. 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(b)(2).

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

37. Paragraphs 2 through 14 above are incorporated herein.

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38. Under Vermont law, an LPN is prohibited from engaging in conduct of a character likely to deceive, defraud, or harm the public.
39. Paragraphs 2 through 14 above demonstrate that Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public when she engaged in a sexual relationship with a patient.
40. 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)(3).

Violation Six: 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.

41. Paragraphs 2 through 14 above are incorporated herein.
42. Under Vermont law, an LPN must exercise independent professional judgment in the performance of licensed activities when such judgment is necessary to avoid action repugnant to the profession.
43. Paragraphs 2 through 14 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 engaged in a sexual relationship with a chemical dependency patient, when she failed to consult with her supervisor regarding the conflict with providing nursing care to Patient, and when she accessed Patient's medical record without a valid reason.
44. 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).

Understandings

45. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
46. 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.
47. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
48. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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49. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
50. 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.
51. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
52. 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. 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. 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.
 4. Required Coursework. Respondent shall, at her own expense and within ninety (90) days of the date of entry of this Stipulation and Consent Order, successfully complete (i.e., receive a passing score, if applicable) the following online courses from Relias Academy (or equivalent that the Enforcement Case Manager pre-approves):
 - a. Professional Boundaries for Healthcare Workers (1.00 hour)
 - b. Nursing: Ethical Decision Making (1.00 hour)
 - c. Nursing Ethics, Part 3: Ethics in Nursing (1.5 hours)
 - d. Maintaining Professional Boundaries (0.50 hour)
 - e. HIPAA: The Basics (0.50 hour)
 - f. HIPAA Do's and Don'ts: Electronic Communication and Social Media (0.50 hour)

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- g. Confidentiality in the Treatment of Substance Use Disorders (1.25 hours)
- h. Legal and Ethical Standards of Care in Behavioral Health (2.00 hours)

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.

5. Costs. Respondent shall bear all costs of complying with this Consent Order.
 6. 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.
 7. 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 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: 2/24/2022

STATE OF VERMONT
SECRETARY OF STATE

By: _____

DocuSigned by:
Rachel Heath
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Rachel Heath
Prosecuting Attorney

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RESPONDENT

Dated: 2/24/2022

By: DocuSigned by:
Heather Benson
63842DEB20174DF...
Heather A. Benson

APPROVED AND SO ORDERED:

Dated: 3/14/2022

VERMONT BOARD OF NURSING

By: DocuSigned by:
Deborah L. Lacey
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Chairperson

Date of Entry: 3/15/2022

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