

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

IN RE:)
Sarah Appletree) Docket No. 2018-10
License No. 026.0115156)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through Prosecuting Attorney Jennifer B. Colin, and Respondent Sarah Appletree; 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(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.

Stipulated Facts

2. Sarah Appletree is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0115156. This license was originally issued September 14, 2015 and expired on March 31, 2019.
3. In 2018, Respondent's RN license was indefinitely suspended due to diversion of Fioricet from her place of employment in 2015 and failure to disclose discipline in another state to the Vermont Office of Professional Regulation.
4. Respondent now seeks reinstatement of her RN license.
5. As required by the 2018 Order, Respondent submitted to three random urinalyses within 45 days of requesting reinstatement, all with negative results.
6. Respondent obtained an independent evaluation, as required by the 2018 Order.
7. The results of Respondent's evaluation do not indicate any substance use diagnosis. The Independent Evaluator did not recommend any ongoing substance use treatment.

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8. Based on the underlying facts of the 2018 Order and the content and substance of Respondent's independent evaluation, the State supports Respondent's reinstatement request, with the conditions as outlined below.

Understandings

9. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
10. 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.
11. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
12. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
13. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
14. 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.
15. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
16. 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 **REINSTATES** and **CONDITIONS** the Respondent's license and/or re-entry permit for a **MINIMUM OF ONE (1) YEAR**, commencing on the date of reinstatement. The **CONDITIONS** shall be as follows:
1. Renewal. Respondent is immediately eligible to renew and revive her Registered Nurse license. Respondent must comply with all requirements of license renewal.
 2. Re-issuance of License. Upon the commencement of these conditions and the renewal of Respondent's license, Respondent shall be issued a license labeled "conditioned."

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3. Length of Time of Conditions Imposed. The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes a **minimum of one (1) year** of supervised registered nursing practice in which Respondent works at least eighty (80) hours every calendar month as a registered nurse. Part time hours of fewer than eighty (80) hours every calendar month shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.
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. 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 NCSBN online course entitled "Righting a Wrong: Ethics and Professionalism in Nursing" (<https://www.ncsbn.org/5125.htm>) and submit test results, workbooks completed to the satisfaction of the Case Manager, and certificates of completion to the Office of Professional Regulation.

Failure to successfully complete the course within the prescribed timeframe shall constitute a violation of this Order. The coursework may not be counted toward any continuing education requirement of licensure.

6. Random Drug and Alcohol Testing. Respondent shall submit to random drug and alcohol testing through the designated entity. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes. All specimens collected for tests shall be collected in an observed setting. All test results shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any test shall cause that test result to be presumed positive. Any positive test result shall constitute a violation of this Order. Failure to check-in to determine whether Respondent is selected for testing on any given day, regardless of whether Respondent is actually selected that day, may be considered a violation of this Order.

This condition may be removed only by Respondent filing a petition with the Board after Respondent has fully complied with the random testing requirement for a minimum period of six (6) months. The State shall consent or object to any such petition, and a hearing may be held. In any such petition, Respondent must demonstrate, to the satisfaction of the Nursing Board, full compliance with this provision.

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7. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.
8. Drug Use Exception. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Case Manager in writing by Respondent within forty-eight (48) hours of the prescription. If requested by the Enforcement Case Manager, Respondent's health care practitioner shall acknowledge, in writing and on appropriate letterhead, an understanding of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Additionally, the practitioner shall inform the Case Manager of all scheduled/controlled medications prescribed – and the anticipation of how long such prescriptions will need to be taken – within seven (7) days of the prescription.

The Case Manager may request that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential.

Respondent shall provide the Case Manager with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Case Manager within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications or when requested by the Case Manager.

9. Notification to Employers/Nursing School. Respondent shall provide a copy of this Stipulation and Consent 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 Consent 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 Consent Order and the ability to comply with the conditions in the Consent Order.

In the event Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent 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 Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

10. 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

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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.

11. Practice Under Supervision. Respondent shall practice as a registered nurse only in a setting where Respondent has on-site supervision for the entire shift by a licensed registered nurse that is in good standing with the Board.
12. Types of Employment Prohibited. 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 Consent Order.
13. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
14. 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 Consent 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.
15. Notification of Place of Employment/Personal Address/Telephone Number. Within ten (10) days of the date of entry of this Consent 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.
16. Notification to Other States. In the event that 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.
17. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
18. Costs. Respondent shall bear all costs of complying with this Consent Order.
19. 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,

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this Order shall be automatically extended until the unprofessional conduct matter is concluded.

20. 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.
- B. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.
- C. 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).
- D. 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: July 07, 2021

By: E-SIGNED by Jennifer Colin
on 2021-07-07 12:59:25 EDT
Jennifer B. Colin
Prosecuting Attorney

RESPONDENT

Dated: July 07, 2021

By: E-SIGNED by Sarah Appletree
on 2021-07-07 09:41:17 EDT
Sarah Appletree

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: July 12, 2021

By: E-SIGNED by Jennifer Laurent
on 2021-07-12 12:45:31 EDT
Chairperson

Date of Entry: 7/13/2021

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In Re: Sarah Appletree, RN
License no.: 026.0115156

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Docket no.: 2018-10

**UNPROFESSIONAL CONDUCT CHARGE
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Participating Board Members:

Ellen Watson, APRN, Chair
Jennifer Laurent, APRN
Deborah Swartz, RN
Virginia Hudson, RN
Jill Duell, LPN
Kelly Sinclair, LNA
William G. White, Jr.
Luana Tredwell, LPN

Prosecuting the case: Jennifer B. Colin, Esq.

Respondent: Did not appear

Presiding Officer: Stephen A. Reynes

This matter came before the Board of Nursing on Specification of Charges alleging unprofessional conduct. The hearing was held on September 10, 2018, at the Office of Professional Regulation in Montpelier, Vermont. The State was represented by Jennifer B. Colin, Esq. The Respondent did not appear at the hearing.

Findings of Fact

Based on a Review of the pleadings and the file, and on the evidence presented to the Board at the hearing, the Board finds as follows:

1. The Respondent is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0115156, originally issued on September 14, 2015, and is set to expire on March 31, 2019. She is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a and 814(d); 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 Respondent did not appear at the hearing. The Respondent had been provided Notice of the hearing. The State did not present evidence at the hearing; instead the State referenced the

Specification of Charges dated and filed in this matter on February 15, 2018 and the Respondent's Answer filed March 5, 2018.

3. Undisputed Facts in the Respondent's Answer include that Respondent:

- was employed as an RN at Apple Rehab in Avon, Connecticut (the "Facility") during the relevant time period (Undisputed Facts Nos. 3 and 4); and
- that the Facility notified the Drug Control Division of the State of Connecticut Department of Consumer Protection of suspected diversion of Fioricet by Respondent and that the Respondent admitted to diverting Fioricet from the Facility to self-medicate for severe migraines (Undisputed Facts Nos. 5 and 8; and in her Answer to No. 7 she states that she diverted Fioricet but denies the alleged number of tablets and adds that she made restitution to the Facility); and
- that she submitted an application on February 8, 2017 to renew her Vermont RN license (Undisputed Fact No. 13).

4. In her Answer, the Respondent made no response to numerous other numbered Statements of Fact in the Specification of Charges, including, but not limited to, the following:

- Fioricet is a medication that contains, among other elements, barbiturate and stimulant that can be habit-forming. (No. 6);
- The Affidavit signed by Respondent states that if she seeks a new license or to reinstate her license in the future, the allegations contained in the State of Connecticut's Petition Number 2015-1365 shall be deemed true. (No. 10);
- Under 3 V.S.A. §129(a)(5), a licensee disciplined by a licensing agency in another jurisdiction for conduct that would constitute unprofessional conduct in Vermont may also be disciplined in Vermont. (No. 11);
- Review of the underlying facts of the Connecticut action shows that Respondent's diversion from a Facility in Connecticut which resulted in her voluntarily surrendering her Registered Nurse license in Connecticut would constitute unprofessional conduct in the State of Vermont. (No. 12);
- As an RN, Respondent is prohibited from diverting drugs for unauthorized use. (No. 17).
- Paragraphs 2 through 12 of the Specification of Charges demonstrate that Respondent diverted drugs for unauthorized use in violation of 26 V.S.A. §1582(a)(2). (No. 18).
- The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent diverted drugs for unauthorized use in violation of 26 V.S.A. §1582(a)(2). (No. 19).
- Paragraphs 2 through 15 of the Specification of Charges demonstrate that Respondent intentionally provided false information to OPR regarding the voluntary surrender of her Connecticut RN license in order to maintain her Vermont license as an RN. (No. 21), and
- 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. §129(a)(1). (No. 22).

Conclusions of Law

Based on the evidence presented, the admissions and the facts found above we conclude as follows:

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence. 3 VSA § 129a(c).

The Respondent's failure to deny or respond to the statements in the Specification of Charges set out in Finding No. 4 above, among others, constitute admissions of same. Vermont Rules of Civil Procedure (V.R.C.P) 8(d), applicable to these proceedings by the Administrative Rules of Practice of the Office of Professional Regulation Rule 2.2. Those admissions, combined with undisputed facts in the Respondent's Answer, demonstrate that the Respondent did, as alleged in Violation One of the Specification of Charges, violate 26 V.S.A. §1582(a)(2) by diverting or attempt to divert drugs or equipment or supplies for unauthorized use; and, as alleged in Violation Two of the Specification of Charges, violate 3 V.S.A. §129a(a)(1) by fraudulent or deceptive procurement or use of a license.

The Board finds and concludes that the Respondent has committed unprofessional conduct by her actions as specified above.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary. In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does **ORDER** that the Respondent's license be **Indefinitely Suspended**.

Indefinite Suspension. In the event that the Respondent seeks reinstatement of her license, she must petition the Board 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 the Board 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;
- (b) Submit to the Enforcement Unit Case Manager the results of a minimum of three (3) random urine analyses:
 - (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 urine analysis 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 urine analyses. 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 urine analyses must be collected in an observed setting, administered by a pre-approved lab qualified to analyze samples for forensic purposes, the results of which shall be negative;
- (iii) Failure to appear for; refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed positive; and
- (c) If recommended by an Independent Evaluator, enter into a treating professional agreement and substance abuse treatment plan with a pre-approved treating professional(s) and follow all recommendations.
- (d) 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, urine analysis results, the facts contained in the Board Order, and any other relevant factors at that time.

Vermont Board of Nursing

By: 
Ellen Watson, APRN, Chair

Date: October 5, 2018

DATE OF ENTRY: 10-10-18

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a board 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.