

Burlington

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

IN RE:)
ELIZABETH C. EIKENBERRY) Docket No. NU67-0507
License No. 025-0002472)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Elizabeth C. Eikenberry, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.

Statement of Facts

2. Elizabeth C. Eikenberry (the "Respondent") of Burlington, Vermont is a licensed practical nurse holding license number 025-0002472, issued by the State of Vermont. This license was originally issued on or about April 30, 1982 and expired on January 31, 2008.
3. During all relevant times the Respondent was practicing as a licensed practical nurse at The Ethan Allan Residence (the "Facility") in Burlington, Vermont.
4. On or about April 20, 2007 the Respondent was witnessed on a surveillance tape drinking from a resident's liquid Oxycodone bottle and replacing the Oxycodone with an unknown substance.
5. On or about April 23, 2007, the Respondent admitted to Detective Jeff Krauss that she had been diverting liquid Oxycodone from resident H.M. (an 87 year old resident with multiple chronic conditions) for approximately three weeks and substituting the diversion with cranberry juice. The Respondent also admitted to diverting Vicodin pills from resident C.J. (a 97 year old resident with multiple chronic conditions) during the same time period.
6. The Board summarily suspended the Respondent's license on or about May 14, 2007.
7. On or about December 17, 2007 the Respondent was convicted of the felony offense of Obtaining a regulated Drug by Deceit and the misdemeanor offense of Abuse of a Vulnerable

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

Adult. The Respondent was sentenced to 18 to 36 months in prison with all but six months suspended. She will be on probation for five years and may not practice nursing while on probation.

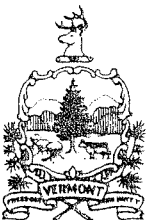
Charges

8. The above acts and circumstances, alone or in combination, violate:
- i. 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);
 - ii. 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession);
 - iii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
 - iv. Vermont Board of Nursing Administrative Rules Chapter 4, Rule IV, II, C. ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials);
 - v. 26 V.S.A. § 1582(a)(5) (is habitually intemperate or is addicted to the use of habit forming drugs);
 - vi. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); and
 - vii. 3 V.S.A. § 129a(a)(conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.

Understandings

9. Respondent agrees that the Order below is 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.

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Prosecuting Attorney
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Montpelier, VT
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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 **REVOKES** Respondent's license to practice nursing. The Respondent is prohibited from applying for licensure for a minimum of five years from the date of entry below or until she completes criminal probation, which ever is shorter.

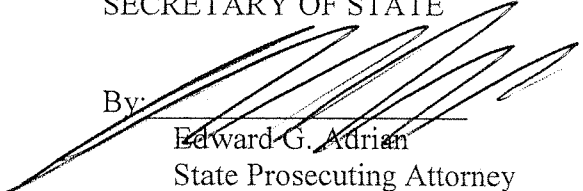
B. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

C. 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: 5/15/08

By: 
Edward G. Adrian
State Prosecuting Attorney

ELIZABETH C. EIKENBERRY
RESPONDENT

Dated: 5-12-08

By: 
Elizabeth C. Eikenberry

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 5/13/08

By: 
E.M. Allen, Esq.

STATE OF VERMONT



Prosecuting Attorney
Office of
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9 Baldwin Street
Montpelier, VT
05609-1107

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 6-9-08

By: Sinda Rite
Chairperson

Date of Entry: 6/11/08

nu.eikenberry.stip

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Prosecuting Attorney
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9 Baldwin Street
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Mullen, 10/10

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

In re: Elizabeth Eikenberry }
License No. 025-0002472 }
Docket No. NU67-0507 }

SUMMARY SUSPENSION ORDER

On Monday 14 May 2007, this matter came before the Vermont State Board of Nursing by petition of the State of Vermont seeking a summary suspension pursuant to 3 V.S.A. § 814(c). The hearing took place at the Secretary of State's office, Heritage Building, 81 River Street in Montpelier, Vermont.

The Board has authority to suspend summarily a license pending further proceedings if it determines that public health, safety or welfare imperatively require emergency action.

**Findings of Fact &
Conclusions of Law:**

Based on a review of the evidence presented at the hearing of this matter, the Board finds:

1. The Respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a)(3); and the Administrative Rules of the Office of Professional Regulation.
2. The State filed a "Request for Summary Suspension" dated 9 May 2007, alleging that Respondent diverted medication (oxycodone) prescribed to a patient at The Ethan Allen Residence facility where she worked.
3. The State argues that public health, safety or welfare imperatively requires emergency action, and the state asks this Board to suspend summarily the Respondent's license prior to a full hearing on the merits.
4. The Board has considered the evidence related to the allegations in the State's Request for Summary Suspension.
5. The Board finds that the State has, in its presentation of evidence, met its burden to the necessary degree of showing the need for emergency action to protect the public health, safety and welfare.
6. Pursuant to 3 V.S.A. § 814(c), the Board issues the following temporary order, which shall remain in effect until further action by this Board.

ORDER

The Board of Nursing GRANTS the State of Vermont's Request for Summary Suspension.

The Respondent's license is SUMMARILY SUSPENDED pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

- END -

Vermont Board of Nursing

By: *Susan O. Farrell*
Susan O. Farrell, RN
Board Chairperson

Dated at Montpelier: 14 May 2007

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/16/07

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, 26 Terrace Street, Montpelier, Vermont 05609-1101 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.



STATE OF VERMONT
BOARD OF NURSING

109 State Street
Montpelier, Vermont 05602

NU-13-M-82

25-2472

IN THE MATTER OF
ELIZABETH MONGEON EIKENBERRY, LPN

Y
Y
Y
Y
Y

Findings, Conclusions, & Order

INTRODUCTION

On December 10, 1982, Elizabeth Claire Mongeon Eikenberry, a Licensed Practical Nurse in the State of Vermont, was charged before the Vermont Board of Nursing with three offenses: conviction of a crime related to the practice of nursing, in violation of 26 VSA § 1582(a)(2) and Administrative Rule N. 6.01(b); addiction to the use of Meperidine, a habit-forming drug, in violation of 26 VSA § 1582(a)(5) and Rule N. 6.01(g); and engaging in diverting drugs intended for patients to personal use and falsifying patient records, conduct likely to harm the public, in violation of 26 VSA § 1582(a)(7) and Rule N. 6.01(k)(3) and (5). A written Notice of Hearing dated December 16, 1982 was duly served on Respondent by certified mail, return receipt requested, at her last-known address. This Notice stated that the hearing would be held on January 18, 1983 in the Pavilion Building in Montpelier, Vermont; stated the legal authority and jurisdiction under which the hearing would be held, 26 VSA § 1582(a); referred to the aforementioned sections of the statutes and rules involved; and set forth the matters at issue and the particulars of the alleged misconduct; all in accordance with 3 VSA § 809 and 26 VSA § 1582(b)(1) and (3).

On January 18, 1983, under the authority of 26 VSA § 1582(a), a Formal Hearing to consider whether Elizabeth Mongeon Eikenberry's license to practice nursing in Vermont should be revoked or suspended on account of these charges was held in Montpelier, Vermont, in accordance with 3 VSA § 809 and 26 VSA § 1582(b). At this

Formal Hearing, the State was represented by Geoffrey A. Yudien, Esq., Assistant Attorney General; Respondent did not appear either personally or through counsel. Although the State put on no witnesses, it did submit the following documentary evidence, which was admitted by the Board: (1) A certified copy of an Indictment and Entry of Sentence in Common Pleas Court, Franklin County, State of Ohio, against Elizabeth C. Mongeon; (2) A Criminal Investigation Summary by the Narcotics Bureau of the Columbus (Ohio) Police Department; and (3) an Adjudication Order revoking Ms. Mongeon's Ohio license to practice nursing. In addition, on its own motion, the Board admitted into evidence a letter from Ms. Mongeon-Eikenberry dated January 10, 1983 and addressed to Rita C. Knapp of the Office of the Secretary of State of Vermont. After considering all the evidence presented, the Vermont Board of Nursing makes the following:

FINDINGS OF FACT

1. Respondent, Elizabeth Claire Mongeon Eikenberry, LPN, is licensed as a Practical Nurse in the State of Vermont, holding license number 25-0002472.
2. Between March 31st and April 1, 1982, Respondent falsely indicated on patient charts that three ampules of Dilaudid had been administered, when in fact this medication had been diverted by her for personal or otherwise unauthorized use.
3. On April 1, 1982, Respondent stated to the Columbus Police: "I admit to taking 9 ampules of Meperidine on my shift between the hours of 7 PM - 7 AM on 3/31/81 - 4/1/81 from St. Luke's [Convalescent Center]. I make this statement of my own free will, without threats or promises made to or against me." This medication was diverted to her personal or otherwise unauthorized use.
4. Respondent had been a habitual user of Demoral, a controlled substance, for at least one year prior to August of 1981, as the Ohio Common Pleas Court found.
5. Respondent had personally abused Meperidine, a controlled substance, for at least six years prior to April 1, 1981, as she admitted to Detective Ross of the Narcotics Bureau of the Columbus Police Department.

6. On August 26, 1981, Respondent pleaded guilty and was convicted of attempted theft of drugs in the Court of Common Pleas, Franklin County, Ohio, a crime related to the practice of nursing.
7. Based on this conviction, on January 25, 1982, the Board of Nursing Education and Nurse Registration of the State of Ohio revoked Respondent's license to practice practical nursing in Ohio.

CONCLUSIONS OF LAW

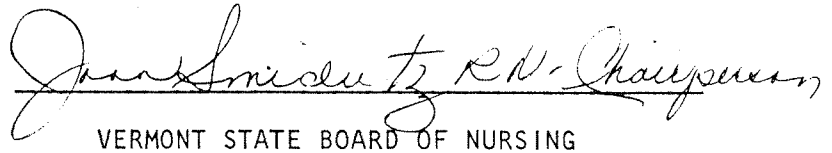
1. Respondent's falsification of patients' records between March 31st and April 1st 1981 indicating that she had dispensed Dilaudid to patients when in fact she had diverted the medication to her own unauthorized use constitutes conduct likely to harm the public, in violation of 26 VSA § 1582(a)(7) and Rule N. 6.01(k)(3).
2. Respondent's diversion of Meperidine between March 31st and April 1st 1981 for her personal or otherwise unauthorized use constitutes conduct likely to harm the public, in violation of 26 VSA § 1582(a)(7) and Rule N. 6.01(k)(5).
3. Respondent's habitual use of Demoral, a controlled substance, for at least one year represents habitual intemperateness, in violation of 26 VSA § 1582(a)(5) and Rule N. 6.01(g).
4. Respondent's addiction to Meperidine, a controlled substance, for at least six years represents addiction to the use of a habit-forming drug, in violation of 26 VSA § 1582(a)(5) and Rule N. 6.01(g).
5. Respondent's Ohio conviction for attempted theft of drugs is the conviction of a crime related to the practice of nursing, in violation of 26 VSA § 1582(a)(2) and Rule N. 6.01(b).

WHEREFORE, the Vermont State Board of Nursing this day ORDERS that:

1. The license to practice practical nursing of Elizabeth Mongeon Eikenberry, license # 25-0002472, be suspended.
2. If, however, on or after February 18, 1984, Ms. Eikenberry provides proof satisfactory to the Vermont State Board of Nursing that she has indeed this past year (before today, February 18, 1983) undergone treatment in a drug rehabilitation program and had her urine tested weekly for drugs; and that for one year from today forward she (1) has continued to be treated in a recognized drug rehabilitation program, (2) has demonstrated her ability to

remain drug-free and documented six additional months of weekly urine testing that continues to be negative, (3) has not been convicted of any further crime or violation of statute or rule regulating the practice of nursing, and (4) meets all other statutory and regulatory requirements for the practice of practical nursing at the time of her application for reinstatement, she may regain her suspended Vermont license.

DATED at Montpelier, Vermont this 18th day of February 1983.

Handwritten signature of Joan Smith, followed by the text "to R.N. Chapman".

VERMONT STATE BOARD OF NURSING