

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

In re: REBECCA FRIEDMAN
License No. 026.0051705

}
}
} Docket No. 2019-10

Appearances:

Prosecutor: Jennifer B. Colin, Esq.
Respondent: Did not appear

Hearing Officer: George K. Belcher

DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on May 14, 2019 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is a Licensed Registered Nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on January 16, 2019. The Respondent was sent a Notice of Charges in this matter by first class mail to her attorney of record, Norman Watts, Esq. on January 17, 2019. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. On May 1, 2019 a notice was sent to the Respondent's attorney advising of the hearing before the Board to find a default and advising that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you."
5. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer. The Respondent did not appear at the hearing on default. Attorney Watt did communicate to the State Prosecutor that he and his client had no opposition to the request for default.
6. Upon consideration of the Prosecution's presentation and taking notice of the OPR file, the Hearing Officer of the Board finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Board may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d),

and 3 V.S.A. § 814(c).

7. It is specifically found that in 2013 while working at the V A Medical Center in White River Junction, Vermont the Respondent diverted oxycodone from patients to herself to self-treat her anxiety. She admitted this to the police but was not criminally charged. The Respondent has not practiced nursing since October of 2016. An investigatory report by the Office of Professional Regulation was completed in May of 2018.
8. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended with the standard drug and alcohol conditions should the Board later determine that the Respondent's license should be reinstated. Those recommended conditions follow in the proposed order below.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board may find, based up the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges. The Respondent committed unprofessional conduct by violating 26 VSA Sec. 1582(a)(2) (Diverting or attempting to divert drugs or supplies for unauthorized use); 3 VSA Sec. 129a(a)(15) (failure to exercise independent judgment in the performance of licensed activities); and 26 VSA Sec. 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud or harm the public).

Proposed Order

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**. In the event that the Respondent seeks to regain her license, she must petition for reinstatement. At least forty-five (45) days prior to 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 Default 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, as well as any recommendations that would ensure Respondent is safe to practice. The evaluation must be submitted to the Enforcement Unit Case Manager;
- (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.

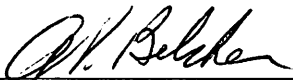
The process by which Respondent learns whether the Respondent is selected to provide a sample on any given day will be governed by the policy of the pre-approved person or entity conducting the testing at that time;

- (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;
- (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.

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 Default Order, and any other relevant factors at that time.

The Hearing Officer reports the above facts, conclusions of law, and the finding of DEFAULT to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 22nd day of May, 2019.



George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on 10 June 2019. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- /✓ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED.

Vermont Board of Nursing

By: 
Ellen Watson, Chair
Vermont Board of Nursing

Date: 10 June, 2019

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6.11.19

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 St., 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.





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

IN RE:)
Rebecca M. Friedman) Docket No. 2019-10
License No. 026.0051705)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following charges against Respondent Rebecca M. Friedman:

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 ("OPR").

Statement of Facts

2. Rebecca M. Friedman ("Respondent") of Woodstock, Vermont is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0051705. This license was originally issued on June 18, 2009 and expires on March 31, 2019.
3. During the relevant time period, Respondent was employed as an RN at the White River Junction VA Medical Center located in White River Junction, Vermont ("the Facility").
4. Between April and July of 2013, Respondent diverted controlled medications, specifically oxycodone, from the Facility.
5. Respondent's diversion was discovered by the Facility in July 2013 when auditing Pyxis reports.
6. Between April and July 2013, Respondent diverted over 200 pills by withdrawing the pills from the Pyxis machine for various patients but then not documenting the administration of the medication.

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7. Respondent admitted the diversion to police in White River Junction, Vermont on July 24, 2013, but she was not criminally charged with any violation of law.
8. Respondent reports that she immediately ceased her practice as an RN on July 24, 2013 and resigned her position at the Facility in January 2014.
9. Immediately upon admitting to police that she diverted controlled medications from the Facility, Respondent began attending Narcotics Anonymous meetings followed by a four-month Intensive Out-Patient Program for drug rehabilitation run by Dartmouth Hitchcock Medical Center.
10. Respondent indicates that she diverted controlled medications to self-treat anxiety issues.
11. Respondent reports that she received continuous psychiatric care since 2013.
12. Respondent returned to nursing in October 2014 and practiced until October 2016.
13. Respondent asserts she has not diverted medications or self-medicated since July 2013.
14. The Department of Veterans Affairs made a report to OPR on August 1, 2016, over three years after the diversion was discovered by the Facility, the entire substance of which stated:

In compliance with applicable authority be advised that there is substantial evidence that Rebecca Friedman, R.N., so significantly failed to meet generally-accepted standards of clinical practice so as to raise reasonable concern for the safety of patients by making repeated administration and documentation errors with controlled medications.

15. Despite a written request for additional information from OPR, the VA did not provide any additional information regarding its complaint until OPR Investigators visited the Facility to obtain further information in September 2017, at which time the VA provided additional information that the case involved diversion of narcotics in 2013 by Respondent.
16. OPR's investigation of the conduct was completed in May 2018.
17. Respondent reports that she sustained a traumatic brain injury (TBI) in January 2017 and has not practiced nursing since October 2016.

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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.

18. The State re-alleges and incorporates Paragraphs 2 through 17 above.
19. As an RN, Respondent is prohibited from diverting drugs for unauthorized use.
20. Paragraphs 2 through 17 above demonstrate that Respondent diverted drugs from the Facility for unauthorized use in violation of 26 V.S.A. §1582(a)(2).
21. 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).

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

22. The State re-alleges and incorporates Paragraphs 2 through 17 above.
23. As an RN, Respondent is required to refrain from engaging in conduct of a character likely to deceive, defraud, or harm the public.
24. Paragraphs 2 through 17 demonstrate that Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public by stealing controlled medications from the Facility and documenting the withdrawals under the names of various patients.
25. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct of a character likely to deceive, defraud, or harm the public in violation of 26 V.S.A. §1582(a)(3).

Violation Three: 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.

26. The State re-alleges and incorporates Paragraphs 2 through 17 above.
27. 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.
28. Paragraphs 2 through 17 demonstrate that Respondent failed to exercise independent professional judgment by diverting controlled drugs from the Facility.

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

Relief Requested

WHEREFORE, the license of Rebecca M. Friedman should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 16th day of January, 2019.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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