

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

IN RE:	)	
Nancy A. Hodecker	)	Docket No. 2018-111
License No. 026.0033348	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through Prosecuting Attorney Jennifer B. Colin, and Respondent Nancy A. Hodecker, by and through her counsel Sarah Vangel, Esq., 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. Nancy A. Hodecker ("Respondent") of Brattleboro, Vermont is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0033348. This license was originally issued on June 26, 2006 and expires on March 31, 2021.
3. During the relevant time period, Respondent was employed as an RN at Brattleboro Memorial Hospital ("the Facility") in Brattleboro, Vermont.
4. In January 2017, while reviewing a high utilization report of controlled substances, the Vice President of Patient Care Services ("VPPCS") of the Facility noted a significantly high utilization of hydromorphone and oxycodone by Respondent.
5. The VPPCS then directed the Directors of Pharmacy and Nursing of the Facility to run more detailed reports of Respondent's withdrawal and administration of hydromorphone and oxycodone.
6. On January 31, 2017, the Facility placed Respondent on administrative leave pending completion of the Facility's investigation of Respondent's withdrawal and administration of hydromorphone and oxycodone.

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

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7. The Facility's reports showed that from October 2016 through January 2017, Respondent withdrew 58 oxycodone 5mg tablets from the Pyxis machine, but failed to document the administration or waste of more than 20 doses (over 30 oxycodone 5 mg tablets).
8. The Facility's reports showed that from October 2016 through January 2017, Respondent withdrew over 150 doses of hydromorphone 2mg/ml syringes from the Pyxis machine, but failed to document the administration or waste of over 20 of those doses.
9. In addition to her failure to document administration or waste of the controlled drugs as set forth in above, Respondent's withdrawal, administration, and documentation of both hydromorphone and oxycodone showed various and significant deviations from standard administration procedures and/or provider orders.
10. For example, on numerous occasions, Respondent documented administering dosages of controlled drugs to numerous patients hours earlier than allowed by the provider orders, based upon the documented administration time of the previous dosage.
11. Respondent was interviewed by OPR Investigator John Lewis on August 20, 2018.
12. In the interview, Respondent stated if a patient reported pain and wanted pain medication, she typically went to the Pyxis machine, withdrew the medication and administered it, rather than first consulting the Medication Administration Record (MAR) to confirm medication orders and determine when pain medication was last administered.
13. Respondent told the OPR Investigator that she believed she would have obtained physician orders to administer medications early.
14. Respondent could not explain to the OPR Investigator why there were no provider orders to administer medications early.
15. Respondent could not explain to the OPR Investigator why there was no documentation of administration of narcotics on many occasions.
16. In the interview, Respondent told OPR Investigator Lewis that she recalled a specific time in the fall of 2016 when she inadvertently left an oxycodone in her pocket and, upon finding it in her pocket at home, she took the pill to help her sleep. She did not recall the patient for whom the oxycodone was prescribed.
17. Respondent said she may have taken oxycodone from the Facility as many as five times, but did not recall specific details or the patients for whom the oxycodone tablets she took were prescribed.
18. On February 3, 2017, the Facility terminated Respondent's employment based upon the outcome of its investigation.

19. After the Facility terminated Respondent's employment in 2017 to March 2019, Respondent worked as a nursing supervisor at a nursing and rehabilitation center in Brattleboro, Vermont.

Violation One: 26 V.S.A. §1582(a)(2) Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

20. Paragraphs 2 through 25 above are incorporated herein.
21. As an RN, Respondent is prohibited from diverting drugs for unauthorized use.
22. Paragraphs 16 and 17 above demonstrate that Respondent diverted drugs from the Facility for unauthorized use in violation of 26 V.S.A. §1582(a)(2).
23. 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: 3 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

24. Paragraphs 2 through 23 above are incorporated herein.
25. As an RN, Respondent is required to refrain from engaging in conduct of a character likely to deceive, defraud, or harm the public.
26. Paragraphs 2 through 18 demonstrate that Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public by diverting controlled substances and/or failing to document the administration or waste of controlled substances on many occasions.
27. 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(b)(1) 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: (1) performance of unsafe or unacceptable patient or client care.

28. Paragraphs 2 through 23 above are incorporated herein.
29. As an RN, Respondent is required to provide safe and acceptable patient care.
30. Paragraphs 2 through 18 demonstrate that Respondent performed unsafe and unacceptable patient care by failing to administer controlled drugs to patients as required by the provider orders.

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

31. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because on multiple occasions Respondent administered controlled substances to patients over one hour early, thereby performing unsafe and unacceptable patient care in violation of 3 V.S.A. §129a(b)(1).

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.

32. Paragraphs 2 through 23 above are incorporated herein.
33. The essential standards of acceptable and prevailing practice require that an RN accurately document the withdrawal, administration, and waste of controlled medications.
34. Paragraphs 2 through 18 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice when she failed to document administering or wasting numerous controlled medications.
35. The essential standards of acceptable and prevailing practice require an RN to withdraw controlled medications only when needed by the patient and to administer the medications promptly in accordance with provider orders.
36. Paragraphs 2 through 18 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice when she failed to administer controlled medications to patients in accordance with provider orders.
37. 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(b)(2).

Violation Five: 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.

38. Paragraphs 2 through 23 above are incorporated herein.
39. 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.
40. Paragraphs 16 and 17 demonstrate that Respondent failed to exercise independent professional judgment by diverting narcotics.
41. Paragraphs 3 through 17 demonstrate that Respondent failed to exercise independent professional judgment failing to administer controlled medications as indicated by provider orders.

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42. 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).

Violation Six: 3 V.S.A. §129a(a)(7) Willfully making or filing false reports or records in the practice of the profession, willfully impeding or obstructing the proper making or filing of reports or records, or willfully failing to file the proper reports or records.

43. Paragraphs 2 through 23 above are incorporated herein.
44. As an RN, Respondent is required to make and file accurate reports and records in the practice of the profession and must refrain from willfully making or filing false reports or records and from willfully impeding or obstructing the proper making or filing of reports or records.
45. Paragraphs 2 through 18 demonstrate that Respondent willfully made and filed false reports and records in the practice of the profession and willfully impeded or obstructed the proper making or filing of reports or records by failing to accurately document the administration of controlled substances to patients.
46. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct by willfully impeding or obstructing the proper making or filing of reports or records in violation of 3 V.S.A. §129a(a)(7).

Understandings

47. This Stipulation is neither an admission of liability by Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and the expense of protracted litigation, the Parties enter this full and final Stipulation pursuant to these Understandings and the Order below. Respondent does not dispute that the State may be able to prove these charges by a preponderance of the evidence if this matter proceeds to a merits hearing.
48. 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.
49. 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 in future hearings if this agreement is not accepted by the Board.
50. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
51. Respondent is not under the influence of any drugs or alcohol at the time of signature of this Stipulation and Consent Order.

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52. 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.
53. Respondent voluntarily waives the right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
54. 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 **INDEFINITELY SUSPENDS** Respondent's license to practice as a Registered Nurse **from the date of entry below**. At least forty-five (45) days prior to requesting reinstatement, Respondent must:
 1. Obtain an independent evaluation with a written report by a pre-approved psychologist or mental health counselor with Masters or Ph.D. graduate level education with expertise in alcohol and substance abuse diagnosis and counseling, in good standing with his or her licensing authority. The evaluation and report must include a drug and alcohol assessment. The Independent Evaluator must also verify receipt and review of this Order in the report. The independent evaluation report must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients and is safe to practice.
 2. Submit to the Enforcement Unit Case Manager the results of a minimum of three (3) random urine analyses:
 - a. When Respondent is ready to petition for reinstatement, Respondent shall contact the Enforcement Unit Case Manager 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 a minimum of three (3) random urine analyses. The process by which Respondent learns whether she 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; and
 - b. The urine analyses must be collected in an observed setting; administered by a pre-approved person or entity; and analyzed by a pre-approved lab qualified to analyze samples for forensic purposes, the results of which shall be negative.
 - c. 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.

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- B. If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms the Board finds reasonable at the time of Respondent's reinstatement request, taking into account the independent evaluation, urine analysis results, the facts above, and anything else the Board deems relevant.
- C. Notwithstanding any provision above, the Respondent must continue to meet all 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 8/28/19

By: [Signature]

Jennifer B. Colin
Prosecuting Attorney
(802)828-1219
Jennifer.Colin@sec.state.vt.us

RESPONDENT

Dated: 8-26-19

By: [Signature]

Nancy A. Hodecker

APPROVED AS TO FORM ONLY:

ATTORNEY FOR RESPONDENT

Dated: 8.26.19

By: [Signature]

Sarah Vangel, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 9/9/2019
Date of Entry: 9/16/19

By: [Signature]

Chairperson

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

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