

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

IN RE: )  
SHAWN N. MARKS ) Docket No. 2013-418  
License No. 026.0034785 )

**STIPULATION AND CONSENT ORDER**

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Shawn N. Marks, RN, who 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. § 1582; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

**Stipulated Facts**

2. Shawn N. Marks (the "Respondent") of Poultney, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0034785. This license was originally issued on or about October 24, 2006 and is currently set to expire on or about March 31, 2015.
3. At all times relevant, Respondent was employed at Rutland Regional Medical Center (the "Facility"), located in Rutland, Vermont. At all times relevant, Respondent was employed in the Emergency Department (ED).
4. Between June 19, 2013 and June 27, 2013, Respondent diverted narcotic medication, specifically 31 tablets of Percocet, from 6 patients seen in the ED.
5. On or about January 14, 2014, Respondent obtained an independent evaluation from a pre-approved evaluator who stated that he is not a threat to the health and safety of future patients. The evaluator's recommendations for Respondent are reflected in this Order.
6. Prior to entering into this Order, Respondent provided three random negative urine screens.

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### Violations

7. 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) (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 failure to conform to the essential standards of acceptable and prevailing practice).

### Understandings

8. Respondent acknowledges that the facts above are true and that the conditions set out in the Consent Order below are appropriate.
9. 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.
10. 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 if this agreement is not accepted by the Board and proceeds to a contested hearing.
11. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
12. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
13. 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.
14. Respondent voluntarily waives Respondent's right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
15. 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:

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A. The Board of Nursing hereby **CONDITIONS FOR A MINIMUM OF THREE (3) YEARS** Respondent's license; the conditions will be as follows:

- 1) Re-issuance of License: Respondent shall be issued a license labeled "conditioned."
- 2) Length of Time of Conditions Imposed: The conditions shall remain until Respondent has completed all conditions. Respondent shall complete a **minimum of three (3) years** of supervised nursing in which Respondent works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of fewer than forty (40) hours every two (2) weeks shall be credited on a prorated basis.
- 3) Substance Abuse Counseling, Treatment Plan, and Reporting: To the extent recommended by his evaluator and while Respondent is employed as a nurse Respondent shall enter into and continue pre-approved substance abuse counseling until the treating professional certifies in writing that counseling is not necessary. A treatment plan shall be submitted to the Board. Respondent shall authorize Respondent's treating professional to submit to the Board evidence of satisfactory progress with the treatment plan. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.
- 4) Random Drug and Alcohol Testing: Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person or entity that has been pre-approved by the Board or its designee to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

**Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall be presumed positive. Any positive screen is a violation of this Order.**

- 5) Abstain from Drug and Alcohol Use: Respondent shall abstain completely from the consumption or possession of alcohol and illegal drugs.
- 6) Drug Use Exception: Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a medical provider. All current medications taken on a scheduled or as-needed basis shall be disclosed on forms issued by the Board within seven (7) days of receiving a conditioned license. This list must be updated within forty-eight (48) hours of any change.

- i. New prescriptions: a medical provider must be identified to the Board within forty-eight (48) hours. The medical provider must inform the Board, in writing and on appropriate letterhead, review of this Order

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within seven (7) days of entering into the practitioner/patient relationship. Respondent shall cause this prescribing practitioner to inform the Board, in writing and on appropriate letterhead, 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.

- ii. The Board or its designee may request at any time that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential.
  - iii. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.
- 7) Notification to Employers/Nursing School: During the period of conditional licensure Respondent shall provide a copy of this 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 or of any subsequent nursing employment, Respondent's immediate supervisor shall submit an employer agreement form approved by the Board, acknowledging receipt of the Order and ability to comply with the conditions in the Consent Order. If Respondent attends 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. The Program Director shall submit a nursing program agreement form approved by the Board, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.
- 8) Reports from Employers/Program Director: During the period of conditional licensure, within one (1) month of the date of working with a conditional license 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. If Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance.

On, a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices. Reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

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- 9) Practice Under Supervision: Respondent shall practice as a nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse that is in good standing with the Board or equivalent Board in another state.
- 10) Administration of Medications: Respondent is prohibited from administering any controlled substances. This condition may be removed only by Respondent filing a petition with the Board after Respondent has worked as a nurse for six (6) months for at least forty (40) hours every two weeks (or the part time equivalent). It is Respondent's burden to demonstrate that Respondent can safely and competently administer controlled substances. A petition must include appropriate support from Respondent's treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.
- 11) Types of Employment Prohibited: 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 Order.
- 12) Interview with the Board or its Designee: Upon request, Respondent shall appear in person for interviews with the Board or its designee.
- 13) 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. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, time spent practicing nursing out-of-state will not be credited toward the fulfillment of the terms and conditions of this Consent Order. 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.
- 14) 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.
- 15) 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.

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- 16) License Renewal: If Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. Respondent must timely apply and meet the requirements for license renewal.
- 17) Release of Information Forms: Respondent authorizes drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss Respondent and any and all treatment rendered to Respondent for drugs and/or alcohol with the Board or its designee. Any and all information from Respondent's treatment providers may be provided to the Office of Professional Regulation investigators, and that the information can be used for further prosecutions if so warranted. Respondent is entitled to revoke this consent. However, any revocation by Respondent during the term of this Order is a violation of this Order. Consent expires when the conditions are removed from Respondent's license.

This Stipulation and Consent Order shall itself constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31. Respondent's treatment provider may require Respondent's to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

- 18) Costs: Respondent shall bear all costs of complying with this Consent Order.
- 19) Violation of this Order: If Respondent violates the terms of 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.
- 20) Completion of Conditional License Period: Respondent should petition the Board, or its designee, to remove any and all conditions on Respondent's license. Including the following:
- i. Full compliance with the Order.
  - ii. Successful substance abuse rehabilitation;
  - iii. Respondent can safely and competently perform the duties of a licensed nurse.

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Respondent has the burden of proof for the petition.

- B. Notwithstanding any provision above, the Respondent must continue to meet all Nursing 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:

Dated: 2/7/14

STATE OF VERMONT  
SECRETARY OF STATE

By: [Signature]  
S. Lauren Hibbert  
State Prosecuting Attorney

SHAWN M. MARKS  
RESPONDENT

Dated: 2/6/14

By: [Signature]  
Shawn M. Marks

APPROVED AS TO FORM:

Dated: 2/7/14

ATTORNEY FOR RESPONDENT

By: [Signature]  
Ian Carleton, Esq.

APPROVED AND SO ORDERED:

Dated: 2-10-2014

VERMONT BOARD OF NURSING

By: [Signature]  
Vice Chairperson

Date of Entry: 2/11/14

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IN RE:  
SHAWN N. MARKS  
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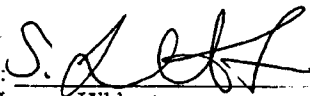
VOLUNTARY INACTIVE STATUS AGREEMENT

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Shawn N. Marks, RN, who stipulate and agree that Respondent's license shall be changed to inactive pending resolution on the merits of the above mentioned case. The State is in agreement with this voluntary designation and will promptly file charges on the above referenced case.

AGREED TO:

STATE OF VERMONT  
SECRETARY OF STATE

Dated: 7/30/13

By:   
S. Lauren Hibbert  
State Prosecuting Attorney

SHAWN N. MARKS  
RESPONDENT

Dated: 7/30/13

By:   
Shawn N. Marks

APPROVED AS TO FORM:

ATTORNEY FOR RESPONDENT

Dated: 7/30/13

By:   
Ian P. Carleton, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 8/12/13

By:   
Chairperson

Date of Entry: 8/12/13

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