

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

IN RE:)
Erik C. McKenney) **Docket No. 2018-118**
License No. 026.0038787)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through Prosecutor Jennifer B. Colin, and Respondent Erik C. McKenney, 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.

Statement of Facts

2. Erik C. McKenney ("Respondent") of Essex Junction, Vermont is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0038787. This license was originally issued on August 15, 2007 and expired on March 31, 2017.
3. During the relevant time period, Respondent was employed as an RN at University of Vermont Medical Center ("the Facility") in Burlington, Vermont.
4. On August 13, 2015, Respondent was responsible for administering sedation to Patient 1, a biopsy patient who had orders for sedation with Midazolam and Morphine. Morphine was ordered instead of the standard Fentanyl because Patient 1 had a Fentanyl allergy.
5. Patient 1 had orders for 2-4 mg of Morphine every 15 minutes as needed.
6. Prior to August 13, 2015, Respondent had never sedated a patient for a procedure with Morphine, though he had administered morphine to patients for other purposes.
7. At 10:25, Respondent documented administering to Patient 1 Morphine 5mg, 1 mg more than the ordered amount. Respondent then proceeded to administer additional Morphine as follows: 3 mg at 10:30, 3 mg at 10:35, and 3 mg at 10:40.

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8. Within fifteen minutes, Respondent administered 14 mg of Morphine to Patient 1, 10 mg more than the maximum ordered dose for fifteen minutes.
9. After the procedure was completed, Respondent approached the resident assigned to the procedure and asked him to retroactively cancel the q15 minute orders and re-order the Morphine at q5 to cover the manner in which Respondent administered the medication to Patient 1.
10. At 14:25, Respondent created an addendum to a 10:35 note in Patient 1's medical record stating that the provider "permits that morphine be given q5 minutes, not q15 as current order specifies."
11. On February 5, 2016, Respondent was assigned to Patient 2, an adult who required moderate sedation for a procedure.
12. For moderate sedation or "conscious sedation" of adult patients, Facility policy required that a credentialed provider sign the patient consent form prior to the initiation of moderate sedation.
13. Facility policy also required that the provider reassess the patient immediately prior to the start of sedation to confirm the identity of the patient, review the pre-sedation assessment with the patient to confirm there had been no interim change in patient condition, and confirm patient agreement with the sedation plan.
14. Respondent initiated sedation of Patient 2 before a credentialed provider reassessed the patient and signed the consent form as required by Facility policy.
15. Respondent initiated moderate sedation of Patient 2 at 10:15, administering Versed 1 mg and Fentanyl 25 mcg. At 10:20, Respondent administered an additional 50 mcg of Fentanyl, noting Patient 2's extreme anxiousness.
16. However, Respondent's sedation flow sheet documentation recorded Patient 2's level of consciousness at a "3" (cooperative, tranquil, responsive) at 10:15 and 10:20, then at a "4" (asleep, brisk response to tactile or auditory stimulus, responsive when awakened, does not drift off to sleep) at 10:25, 10:30, and 10:35.
17. On February 29, 2016, the Facility terminated Respondent for non-compliance with patient care policies and procedures.
18. Since Respondent's termination from the Facility in 2016, he has worked as a travel nurse in New York for three years and has had no complaints filed against his license in Vermont or New York.

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Violation One: 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.

19. Paragraphs 2 through 18 above are incorporated herein.
20. As an RN, Respondent is required to provide safe and acceptable patient care.
21. Paragraphs 2 through 10 demonstrate that Respondent performed unsafe and unacceptable patient care by failing to properly administer morphine as ordered to Patient 1.
22. Paragraphs 11 through 16 demonstrate that Respondent performed unsafe and unacceptable patient care by sedating Patient 2 without obtaining the credentialed provider's reassessment of the patient just prior to sedation or the credentialed provider's signature on the patient consent form.
23. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent failed to adhere to provider orders, hospital policy and protocol for the safe sedation of patients, thereby performing unsafe and unacceptable patient care in violation of 3 V.S.A. §129a(b)(1).

Violation Two: 3 V.S.A. §129a(a)(13) Performing treatments or providing services that the licensee is not qualified to perform or that are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

24. Paragraphs 2 through 18 above are incorporated herein.
25. Vermont law prohibits a registered nurse from providing services that the licensee is not qualified to perform or that are beyond the education, training, capabilities, experience, or scope of practice of the licensee.
26. Respondent was not qualified, experienced or trained, nor was it in Respondent's scope of practice, to deviate from the provider's orders in administering Morphine sedation to Patient 1 in preparation for a medical procedure.
27. Paragraphs 2 through 10 demonstrate that Respondent performed treatments or provided services to Patient 1 that Respondent was not qualified to perform or that were beyond the scope of Respondent's education, training, capabilities, experience, and scope of practice.
28. Respondent was not qualified, experienced or trained, nor was it in Respondent's scope of practice, to sedate Patient 2 without first obtaining a credentialed provider's reassessment of Patient 2 and signed consent form.

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29. Paragraphs 11 through 16 demonstrate that Respondent performed treatments or provided services to Patient 2 that Respondent was not qualified to perform or that were beyond the scope of Respondent's education, training, capabilities, experience, and scope of practice.
30. 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(a)(13).

Understandings

31. 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.
32. This Stipulation and Consent Order vacates the Default Order entered on January 15, 2019, fully and finally resolving all issues and litigation relating to default in this matter, including, but not limited to the notice of appeal and request for stay filed by Respondent on February 20, 2019.
33. In the previous default proceedings in this matter, the State requested that Respondent complete coursework in medication administration and righting a wrong. In March 2019, Respondent completed two NCSBN Learning Extension courses, Medication Errors: Causes & Prevention (4.0 hours) and Righting a Wrong – Ethics & Professionalism in Nursing (3.0 hours), and submitted his completed workbooks and certificates.
34. 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.
35. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
36. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
37. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
38. 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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39. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
40. 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 **CONDITIONS** the Respondent's license for a **MINIMUM OF ONE (1) YEAR, commencing on the date of entry of this order.** The **CONDITIONS** shall be as follows:

1. Renewal and Issuance of License. Respondent is immediately eligible to renew and revive his Registered Nurse license. Respondent must comply with all requirements of license renewal. Upon renewal of his license and the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

2. 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 nursing practice 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. 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.

4. 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. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices, if and when Respondent engages in medication administration. 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 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.

5. Practice Under Supervision. Respondent shall practice as a 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.

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6. 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.

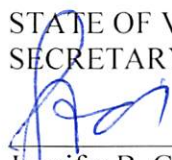
7. Out-of-State Practice. Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board. The Board will approve out-of-state nursing practice so long as Respondent can still comply with the provisions of this Consent 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.

8. 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.

- 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: 7/5/19

STATE OF VERMONT
SECRETARY OF STATE


Jennifer B. Colin
Prosecuting Attorney

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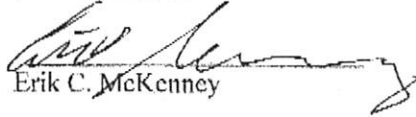


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89 Main Street
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Dated: 7/5/2019

By:

RESPONDENT


Erik C. McKenney

APPROVED AND SO ORDERED:

Dated: 7/8/2019

By:

VERMONT BOARD OF NURSING


ChairpersonDate of Entry: 7.10.19

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VERMONT BOARD OF NURSING**

In re: ERIK C. MCKENNEY
License No. 026.0038787

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} Docket No. 2018-118
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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 January 10, 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 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 November 9, 2018. The Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation on November 15, 2018. The certified mail notice of charges was returned with the notation "Return to sender Unclaimed Unable to Deliver". The ordinary mail notice was not returned. 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 December 17, 2018, 2018 a notice was sent to the Respondent 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." This notice was mailed by certified mail and regular mail. Neither notice was returned as of the date of the hearing for default. The State Prosecutor likewise sent a copy of the Motion for Default to the Respondent on December 13, 2018 to which no answer was made.
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. No contact was made by the Respondent to the attorney for the State indicating that the Respondent intended to contest the charges. 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).

6. It is specifically found that in August of 2015 while working at the University of Vermont Medical Center in Burlington, Vermont the Respondent administered morphine to a patient in a manner inconsistent with the medication orders, both in timing and amount. In February of 2016 while working at the University of Vermont Medical Center in Burlington, Vermont the Respondent administered "moderate sedation" medications in a manner inconsistent with the Facility policy, including failure to secure a patient agreement with the sedation plan and failure to secure the credentialed provider's reassessment of the patient in a timely manner.
7. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended with 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 3 VSA Sec. 129a(b)(2) (Failure to practice competently/failure to conform to essential standards of practice), 3 VSA Sec. 129a(b)(1) (Failure to practice competently by performance of unsafe or unacceptable patient care), and 3 VSA Sec. 129a(a)(13) (Performing treatments or services which the licensee is not qualified to perform or beyond the licensee's scope of practice).

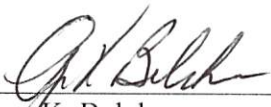
Proposed Order

1. 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 his license, he must petition for reinstatement.
2. **Completion of Coursework:** Prior to petitioning for reinstatement, Respondent must complete two courses pre-approved by the Nursing Case Manager: one course in medication administration and one course in righting a wrong. Upon completion, Respondent must submit written documentation of completion (certificate of completion, etc.) and completed workbook if applicable, to the Board or its designee.

3. If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms are reasonable at the time of Respondent's reinstatement request, which may include a period of supervised practice with employer reports, limitations on practice settings, and other such conditions.

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 ^{7th} 11 day of January, 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 14 January 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.
- /X/ 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

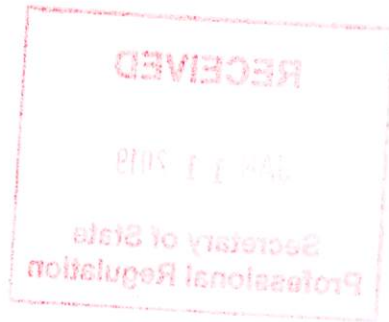
By: 
Ellen Watson, Chair
Vermont Board of Nursing

Date: 14 January, 2019

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 1.15.19

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.



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