

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

IN RE:
DAVID E. TOFEL
License No. 025.0105404

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Docket No. 2015-119

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, David E. Tofel, who stipulate and agree as follows:

Board Authority

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

1. David E. Tofel (the "Respondent") of Norwich, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0105404. This license was originally issued on or about July 31, 2014 and expires on January 31, 2016.
2. At all times relevant, Respondent was employed as an LPN Supervising Staff Nurse at Wake Robin, located in Shelburne Vermont.
3. On a date in early March, 2015, Respondent was the nurse overseeing his unit and his responsibilities included the care of the residents and supervision of the LNAs on his unit. Respondent left his unit five times to visit another unit in the facility. Respondent had only three authorized breaks. Respondent delivered multiple notes to an employee on the other unit during his trips away from his unit. During the same shift, Respondent sent an estimated fifteen text messages to the other employee.
4. When he left the unit, the patients and staff were unattended by a licensed nurse. Respondent did not notify all of the LNAs that he was leaving his unit.
5. Essential standards of licensed practical nursing practice require that prior to leaving an assignment that the licensee must properly notify appropriate personnel to avoid patient abandonment.

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

6. Prior to entering into this Stipulation and Consent Order, Respondent has completed a required NCSBN course entitled: Professional Accountability & Legal Liability for Nurses.

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:
 - a) 3 V.S.A. § 129a(b)(1) and (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: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

Understandings

8. Respondent admits that the facts above are true and that the conditions below are necessary to protect the public.
9. 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.
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 in future hearings if this agreement is not accepted by the Board.
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 of signature of 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 the right to a contested hearing before the Board 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 hereby **WARNS** the Respondent's license.
- B. Notwithstanding any provision above, the Respondent must continue to meet all 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 11/16/15

By: S. Lauren Hibbert

S. Lauren Hibbert
State Prosecuting Attorney

DAVID E. TOFEL
RESPONDENT

Dated: 11/14/15

By: David E. Tofel

David E. Tofel

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 12/14/15

By: Jeanine Carr

Jeanine Carr
Chairperson

Date of Entry: 12/15/15

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