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

IN RE: JOHN P. TOMLINSON
License No. 026-0021627

)
) DOCKET No. NU49-0205

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, John P. Tomlinson, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.

Statement of Facts

2. John P. Tomlinson (the "Respondent") is a registered nurse holding license number 025-0021627 issued by the State of Vermont. This license was originally issued on or about June 30, 1994 and is set to expire on March 31, 2007.
3. The Respondent's license was summarily suspended by the Board on Nursing on March 14, 2005 based upon the facts below.
4. At all relevant times, the Respondent was employed as a registered nurse at Copley Hospital (the "Hospital") located in Morrisville, Vermont.
5. From November 2004-February 2005, the Respondent diverted from the Hospital the regulated drugs Morphine and Percocet numerous times for his own personal use.
6. In several instances, the Respondent removed Morphine from the Pyxis machine, however, it was never given to patients. The Respondent would then have another nurse co-sign that the medication was wasted.
7. In other instances, the Respondent would sign out larger quantities of the narcotics than needed, such as Morphine 10 mg but only giving a total of 2 mg. The Respondent would then have another nurse co-sign that the excess was wasted.
8. When the nurses who co-signed for the Morphine were questioned about the wasting, one of the nurses admitted to not actually witnessing the wasting, and the others

OF VERMONT

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VT 05602

acknowledged witnessing the wasting of a liquid in a syringe, but they could not verify what the liquid was.

9. In early February 2005, the Respondent requested one of the nurses to witness the fact that earlier in the day, he had "wasted 2 Percocets down the sink." The nurse co-signed the wasting, but admitted that she did not see the waste.
10. On February 24, 2005, the Respondent admitted to the Chief Nursing Officer at the Hospital that he had been diverting the drugs and stated that he had started back in November 2004. The Respondent also admitted to State Investigator Karl Packer, on March 6, 2005, that he had diverted Morphine and Percocet from the Hospital since November 2004.

Charges

11. The above acts and circumstances, alone or in combination, violate: 3 V.S.A. § 129a(a) (3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession); 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); and Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, D, 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

Understandings

12. 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.
13. 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.
14. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
15. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
16. 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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Office of
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Montpelier, VT 05602

17. Respondent voluntarily waives his right to a contested hearing before the Board of Nursing.
18. 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 **SUSPENDS THE RESPONDENT'S LICENSE INDEFINITELY FOR A MINIMUM PERIOD OF SIX MONTHS, which shall be retroactive to include the summary suspension period.** Before applying for reinstatement, Respondent must obtain 1) an independent evaluation report by a licensed professional specializing in drug and alcohol abuse, who must be pre-approved by the Board, verifying that Respondent is capable of returning to competent practice and indicating that the Respondent does not present a risk to the safety, health or welfare of his patients; and 2) a letter of recommendation from the Respondent's current substance abuse counselor, John R. Corbett.
- B. If Respondent Tomlinson seeks reinstatement at a future time, once reinstated, the following conditions will apply:

The Board of Nursing hereby **CONDITIONS** the Respondent's license to practice nursing for a minimum period of **THREE (3) YEARS** commencing with the date of reinstatement. The conditions are as follows:

(1) Issuance of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time 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 three (3) years of supervised nursing practice in which he works forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week. Respondent's license is additionally conditioned as follows.

(3) Completion of Substance Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue individual substance abuse counseling with a treating professional approved by the Board until the treating professional shall certify in writing to the Nursing Board that such counseling is no longer necessary. Respondent shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Notification to Treating Professional.

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Respondent shall provide a copy of this Stipulation and Consent Order to his treating professional and cause his treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional.

Respondent shall authorize and cause his treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. 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 every month thereafter.

Respondent shall authorize his treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the conditioned period.

(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 during the conditioned period in which Respondent practices as a nurse and inform them of Respondent's conditional license status.

Within ten (10) days of the commencement of nursing employment and of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, 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 which involves actual patient care, he shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Stipulation and Consent Order and ability of the program to comply with its conditions during clinical experience.

(7) Reports from Employers/Nursing School.

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. This report shall be submitted in writing on forms issued by the Board.

In the event the 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 his performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(8) Administration of Medications.

Respondent is prohibited from administering any controlled substances. This

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condition may be removed only by the Respondent filing a petition with the Board after he has worked as nurse for twelve (12) weeks for at least 40 hours work every two weeks (or the part time equivalent) after the date of reinstatement.

In any such petition, the Respondent must demonstrate, to the satisfaction of the Nursing Board, that he can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from his treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

The removal of this prohibition shall not automatically result in the reinstatement of all medication privileges. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.

(9) Practice Under Supervision.

Respondent shall practice only in a nursing setting where Respondent has direct supervision for the entire shift by a registered nurse that is licensed and in good standing.

(10) Participation in Recovery Group.

Respondent shall participate as recommended by his treating professional, in Narcotics Anonymous meetings and/or other recovery group.

(11) Abstain from Alcohol and Drug Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of prescribed medications as outlined in paragraph B.(12) for the period of time described in paragraph B.(2).

(12) Drug Use Exception.

Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medications if the term exceeds 14 days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication, during the conditioned period, for a period greater than 14 days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall keep a written record of all medications taken, including over the counter drugs, and produce such record upon the request of the Board or its designee.

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(13) 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, who has been 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. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(14) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(15) Types of Employment Prohibited.

Respondent shall not work as a supervising nurse, with the exception of supervising LNAs and other unlicensed assistive persons. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a personal care provider during the conditioned period.

(16) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent leaving the State of Vermont. If Respondent fails to receive such approval before leaving the State, none of the time spent out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Consent Order.

(17) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of reinstatement, Respondent shall notify the Board, in writing, of his 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, personal address, or telephone number.

(18) Notification to Other States.

In the event that the Respondent is licensed as a nurse in any other state(s), he must inform the nurse licensing board of the state(s) in which the Respondent is licensed of the conditional status of his Vermont nursing license within thirty (30) days of the date of reinstatement. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(19) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice nursing, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that he has otherwise complied with the requirements for license renewal.

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(20) Costs.

The Respondent shall bear all costs of complying with this Consent Order.

(21) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the 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 the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(22) Completion of Conditional License Period.

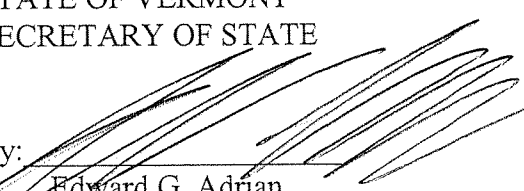
After the conditional license period, the Respondent may petition the Board to remove any and all conditions on his license. The Respondent must present proof that he has full complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and he must demonstrate, to the satisfaction of the Nursing Board, that he poses no danger to the public or the practice of nursing and that he can safely and competently perform the duties of an R.N.

- C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing 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: 5/12/05

By: 

Edward G. Adrian
State Prosecuting Attorney

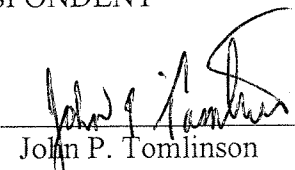
STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

JOHN P. TOMLINSON
RESPONDENT

Dated: 05/10/05

By: 

John P. Tomlinson

APPROVED AND SO ORDERED:

VERMONT BOARD OF NURSING

Dated: 6-13-05

By: Laurey M. Tye
Chairperson acting Chairperson

Date of Entry: 6/14/05

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

IN RE: JOHN P. TOMLINSON)
License No. 026-0021627)

DOCKET No. NU49-0205

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, John P. Tomlinson, R.N.:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.

Statement of Facts

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3. The Respondent's license was summarily suspended by the Board on Nursing on March 14, 2005 based upon the facts below.
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7. In other instances, the Respondent would sign out larger quantities of the narcotics than needed, such as Morphine 10 mg but only giving a total of 2 mg. The Respondent would then have another nurse co-sign that the excess was wasted.
8. When the nurses who co-signed for the Morphine were questioned about the wasting, one of the nurses admitted to not actually witnessing the wasting, and the others acknowledged witnessing the wasting of a liquid in a syringe, but they could not verify what the liquid was.

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9. In early February 2005, the Respondent requested one of the nurses to witness the fact that earlier in the day, he had "wasted 2 Percocets down the sink." The nurse co-signed the wasting, but admitted that she did not see the waste.
10. On February 24, 2005, the Respondent admitted to the Chief Nursing Officer at the Hospital that he had been diverting the drugs and stated that he had started back in November 2004. The Respondent also admitted to State Investigator Karl Packer, on March 6, 2005, that he had diverted Morphine and Percocet from the Hospital since November 2004.

Charges

11. The above acts and circumstances, alone or in combination, violate: 3 V.S.A. § 129a(a) (3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession); 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); and Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, D, 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

Relief Requested

WHEREFORE, the Respondent's license should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 28th day of March 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
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Montpelier, VT 05602

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**STATE OF VERMONT
BOARD OF NURSING**

In re: John P. Tomlinson
License No. 026-0021627

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Docket No. NU 49-0205

**Decision on Request for
SUMMARY SUSPENSION ORDER**

Appearances:

for Petitioner, State of Vermont: Edward G. Adrian
for Respondent:

Presiding Officer: Larry S. Novins

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On March 14, 2005 this matter came before the Board of Nursing on the State's request for summary suspension pursuant to 3 V.S.A. § 814(c) and 3 V.S.A. § 129(a)(4). The respondent did not appear. The Board has authority to summarily suspend a license pending further action if it determines that public health, safety, or welfare imperatively requires emergency action.

Findings of fact

Based on substantial credible evidence the Board finds as follows:

1. The respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. §1582(a), 3 V.S.A. § 129(a), the Administrative Rules of the Office of Professional Regulation.
2. The State filed a "Request for Summary Suspension" dated March 9, 2005 alleging inter alia that Mr. Tomlinson diverted drugs, failed to practice competently, was addicted to drugs, engaged in conduct of a character likely to deceive.
3. The State makes further allegation contending that the public health, safety or welfare imperatively requires emergency action.
4. The Respondent has been provided notice of this matter via a mailed "Notice of Summary Suspension Hearing."
5. The Board has reviewed documents presented by the State.

Conclusions of Law

The Board finds that the allegations in the request for summary suspension have been established to the necessary degree.

The Board concludes that the facts presented do imperatively require emergency action for the public health, safety, and welfare.

The Board issues the following order which shall remain in effect until further action by the Board. 3 V.S.A. § 814(c).

Order:

Respondent's licensed is summarily suspended pursuant to 3 V.S.A. §814(c) the Respondent's registration/license is summarily suspended pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Vermont Board of Nursing

By: *Laurie M. Tyler RN*
~~Susan Farrell, RN, Chair~~

Date: 3/14/05

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 3/18/05

that earlier in the day, he had "wasted 2 Percocets down the sink." The nurse co-signed the wasting, but admitted that she did not see the waste.

10. On February 24, 2005, the Respondent admitted to the Chief Nursing Officer at the Hospital that he had been diverting the drugs and stated that he had started back in November 2004. The Respondent also admitted to State Investigator Karl Packer, on March 6, 2005, that he had diverted Morphine and Percocet from the Hospital since November 2004.

Charges

11. The facts as set out above establish that the public health, safety, or welfare imperatively requires emergency action.
12. The above acts and circumstances, alone or in combination, violate: 3 V.S.A. § 129a(a) (3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession); 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); and Vermont Board of Nursing Administrative Rules, Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

Relief Requested

WHEREFORE, the Respondent's license should be summarily suspended, pursuant to 3 V.S.A. §814, pending a formal resolution of the above matter(s).

Dated Wednesday, March 09, 2005 at Montpelier, Vermont.

STATE OF VERMONT
SECRETARY OF STATE

By: Angela B. Stark
for Edward G. Adrian
State Prosecuting Attorney

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