

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

IN RE:)
KIMBERLY TULLOCH)
License No.s: 101.0105637 & 026.0105876)

Docket No. 2015-334

STIPULATION AND CONSENT ORDER

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Rachel Allen, and the Respondent, Kimberly Tulloch, represented by Eileen Elliot, Esq., who stipulate and agree as follows:

Board Authority

1. The Vermont State Board of Nursing ("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 ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Kimberly Tulloch (the "Respondent") of Arlington, VT, is licensed by the State of Vermont as an Advanced Practice Registered Nurse under license number 101.0105637. This license was originally issued on or about August 26, 2014, and expires on or about March 31, 2017.
3. Respondent is also licensed by the State of Vermont as a Registered Nurse under license number 026.0105876. This license was originally issued on or about July 25, 2014, and expires on or about March 31, 2017.
4. During the relevant time period, Respondent was employed as an APRN at Battenkill Valley Health Center ("BVHC") in Arlington, Vermont.
5. On or about June 26, 2015, Respondent signed a prescription written out to and filled by J.S. for 60 tablets of Hydrocodone APAP 7.5-325mg. At the time, J.S. was a Licensed Practical Nurse ("LPN") at BVHC and Respondent worked with her on a daily basis for approximately six months. J.S. was a patient at BVHC.
6. J.S. discussed her numerous ailments and health conditions with Respondent and others at BVHC. Because Respondent was aware of J.S.'s alleged health problems and because practitioners "cross cover" for each other's patients when one is unavailable, Respondent was willing to sign the prescription J.S. presented to her without insisting on an

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examination. Respondent reported that when J.S. asked her to sign the prescription, J.S. was rubbing her cervical spine and told Respondent that her migraines started in her cervical spine and moved up to her head. J.S. falsely stated to Respondent that she was prescribed the controlled substance for migraines. Respondent had misgivings about signing the prescription on June 26, 2015, and reported this to her supervisor the next day she worked.

7. Respondent freely admitted to signing the prescription written by J.S. without examination of J.S., taking J.S.'s vitals, or without checking the J.S.'s charts prior to signing the prescription to verify that the patient had a narcotic contract.
8. Approximately two weeks prior, on or about June 5, 2015, Respondent signed a prescription for J.D., written by J.S., for 60 tablets of Oxycodone-Acetaminophen 7.5-325.
9. J.D. was a patient at the BVHC for approximately eighteen months. J.D. was examined by multiple providers, including Respondent, and all providers prescribed narcotics. Respondent refilled the prescription because J.D. had been an established patient.
10. On or about June 18, 2015, Respondent signed a prescription for J.D., written by J.S., for 90 tablets of Oxycodone-Acetaminophen 7.5-325.
11. On or about September 17, 2015, Investigator Dennis Menard interviewed the Respondent. The Respondent admitted to signing the June 26, June 5, and June 18 prescriptions for J.S. and J.D.
12. BVHC concluded that J.S. took advantage of and mislead Respondent because she was a recent hire. BVHC terminated J.S., changed its policy that allowed nurses to prepare scripts for a practitioner's signature, and placed Respondent on a BVHC Employee Corrective Action Plan. Under this plan, Respondent was placed on probation for three months and her prescribing activity was audited for six months.

Violations

13. 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(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);
 - b. 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);

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- c. 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).

Understandings

14. Respondent admits that the facts above are true and that the conditions below are necessary to protect the public.
15. 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.
16. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
17. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
18. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
19. 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.
20. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
21. 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** Respondent's license **FOR A MINIMUM OF SIX (6) MONTHS**. The conditions are as follows:
1. Re-issuance of License. Upon 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 six (6) months** 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. Respondent shall be prohibited from working more than fifty (50) hours per week.

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3. Required Coursework. Respondent must successfully complete (i.e., receive a passing grade, if applicable) the following course that has prior approval of the Board or its designee, and then submit written documentation of completion:

a. **Safe Prescribing for Pain**, through the National Institute on Drug Abuse.

This course must be completed within ninety (90) days of the date of entry of this Stipulation and Consent Order. Failure to complete such courses within the prescribed timeframe shall constitute a violation of this Order.

4. Controlled Substances Audit: six (6) months. Respondent shall be audited by a physician or APRN that is in good standing with the Board for six (6) months.

a. Meet monthly with designated physician or APRN to review Respondent's prescriptions for controlled substances.

b. Designated physician or APRN must submit a brief monthly written report on her prescribing practices to the Vermont Board of Nursing.

- 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 2/3/16

By: Rachel Allen
Rachel Allen
State Prosecuting Attorney

KIMBERLY TULLOCH
RESPONDENT

Dated: 2/3/16

By: Kimberly Tulloch
Kimberly Tulloch

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APPROVED AS TO FORM:

Dated: 2/3/2016

ATTORNEY FOR RESPONDENT

By: Eileen Elliott
Eileen Elliott, Esq.

APPROVED AND SO ORDERED:

Dated: 2/8/16
Date of Entry: 2/8/16

VERMONT BOARD OF NURSING

By: Janine Cain
Chairperson

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