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

**In re: Penny Verwey** **Docket No. 2013-767**
**License No. 025.0089224**

Board of Nursing:
Ellen Watson, APRN, Chair
Krystal Bernier, LPN
Daniel Coane, public member
Virginia Hudson, RN
Jennifer Laurent, APRN
Douglas Sutton, RN
Wendy Thurston, RN
Luana Tredwell, LPN
William White, Jr., public member

Appearances: Traci Liebowitz, Esq., Prosecuting Attorney
Penny VerWey, Respondent, did not appear

Administrative Law Officer, Michael S. Kupersmith

**ENTRY ORDER**

The Respondent is a Licensed Practical Nurse whose license was suspended by the Board of Nursing by order issued March 27, 2015, and reinstated on January 8, 2018 with conditions.

This matter came on before the Board of Nursing on February 10, 2020 for a hearing on the Respondent's petition to modify the conditions placed on her license. The State objected to the Respondent's request.

The Respondent failed to appear at the hearing, failed to request a continuance, and failed to communicate any reason for not appearing with either the Board or the State. Accordingly, the Respondent's petition is *denied* for lack of prosecution.

It is SO ORDERED at Montpelier, Vt., this 18th day of February, 2020,

Board of Nursing
By: Ellen Watson, Chair

Date of Entry: 2.24.2020

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

| | | |
|---|---|---|
| IN RE: | ) | |
| PENNY VERWEY | ) | Docket No. 2013-767 |
| License No. 025.0089224 | ) | |

# STIPULATION AND CONSENT ORDER

## STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Annika Green, and the Respondent, Penny Verwey, LPN, 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. Penny Verwey ("Respondent") of Georgia, Vermont, is licensed by the Vermont Board of Nursing as a licensed practical nurse, under license number 025.0089224. This license is currently set to expire on or about January 31, 2016.

3. On December 30, 2013, the Office of Professional Regulation ("OPR") received a drug diversion report from Green Mountain Nursing and Rehabilitation ("GMNR"). At that time, Respondent was employed as an LPN at GMNR. OPR Investigator John Lewis thereafter began an investigation that revealed dozens of instances of suspected drug diversion by Respondent, including, but not limited to:

### Facts re: Wasting Narcotic Medications

4. Review of patient records, narcotic logs and medication administration records revealed that:

   a. On or about October 12, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

   b. On or about October 25, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

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

c. On or about November 11, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

d. On or about September 22, 2013, Respondent documented wasting 2 Hydrocodone pills intended for patient J.H, one at 0800 and one at 1400. Respondent documented that she pulled the drug from the wrong card for the 0800 dose and gave no reason for the 1400 waste.

**Facts re: "PRN" narcotics for patient S.F.**

5. On or about August 2, 2013, Respondent documented an as-needed narcotic cart withdrawal of Hydrocodone to resident S.F., but did not initial the MAR and did not document the reason in the nursing note as required.

6. On or about October 16, 2013, Respondent documented an as-needed narcotic cart withdrawal of Hydrocodone for resident S.F. but did not initial the MAR as required. Respondent noted S.F.'s pain at zero but documented in the nursing note that S.F. was in pain and that she medicated her.

7. On or about November 28, 2013, Respondent documented as as-needed narcotic cart withdrawal of Hydrocodone to resident S.F. but did not initial the MAR and did not document the reason in the nursing note as required.

**Facts re: Diverting Narcotics from Patients and Colleagues**

8. On or about May 8, 2013 at approximately 1400 hours, staff volunteer, K.T. and LNA K.M. observed Respondent enter the narcotic box on the medication cart, remove medication, put it in her mouth and start chewing. Respondent told K.T. she was consuming Percocet "for her teeth." Respondent threatened harm to both K.T. and K.M. if they reported her.

9. Within approximately a week after May 8, 2013, K.T. observed Respondent again enter the narcotic box, remove medication and place the medication into her pocket.

10. Later that same week, K.T. observed Respondent remove a medication card from the narcotic box, remove a medication and place the medication into her purse before returning the card to the narcotic box.

11. On or about December 25, 2013, Respondent called a co-worker, LNA J.S., and asked her for one of her Percocet pills because Respondent stated she had run out and wasn't feeling well. When J.S. refused to give her the narcotic, Respondent texted her back, "fix it." When interviewed by OPR Investigator John Lewis in January, 2014, Respondent admitted to asking J.S. for this narcotic and admitted to the reply text.

**Facts re: Prescription Fraud**

STATE OF VERMONT

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

12. Respondent engaged with the Fletcher Allen Health Care ("FAHC") Pain Clinic to obtain narcotic pain medication in the summer of 2011.

a. Respondent called the FAHC pain clinic stating she was staying in NY while in nursing school and made repeated requests for early refills and requested the pills be picked up by a family member and mailed to her.

b. On or about February 3, 2014, Respondent's husband stated to OPR Investigator Lewis that she commuted each day to NY and her statement that she was staying in NY was untrue.

c. Dr. Brian Erickson of the FAHC Pain Clinic confronted Respondent and she admitted to him that she lied about being out of town when she was in fact home in order to obtain early refills, resulting in overlapping narcotic prescription refills.

d. On or about February 21, 2013, Respondent called the FAHC Pain Clinic seeking more pain medication for sciatic pain. She did not disclose to FAHC Pain Clinic that she had received 20 Hydrocodone pills prescribed by Dr. Richard Cordero at Champlain Oral and Maxillofacial Surgery on the same day as her call for more medication.

13. On or about March 7, 2012, Respondent met with Dr. Patricia Fisher at the Community Health Center in Burlington, VT. Respondent indicated she had sciatic pain and told Dr. Fisher that she wanted help to "get off the meds."

a. Respondent did not tell Pisher that she had been getting narcotics prescribed by the Northwestern Medical Center simultaneously.

b. Respondent also did not disclose that she had picked up a 14 day supply of Vicoprofen from CHP pharmacy 7 days prior to her visit.

c. On or about March 9, 2012, Dr. Fisher contacted Dr. Erickson at the FAHC Pain Clinic to report that Respondent had been seeing Dr. Fisher and had requested Vicoprofen for pain.

d. During the 3/9/12 phone call, Dr. Fisher stated Respondent reported she was taking approximately 6 Vicoprofen a day for pain. Dr. Fisher then reviewed Respondent's prescription records in the Vermont Prescription Monitoring System and discovered that Respondent had actually received over 400 narcotic pills during the month of February, 2012.

14. On or about November 8, 2012, Respondent consulted with Dr. Stephen Pitmon of Alpine Dental, complaining of an infected wisdom tooth and pain. Dr. Pitmon recommended Respondent have the tooth removed.

a. Respondent received a prescription from Dr. Pitmon for Hydrocodone based on her complaints of pain.

STATE OF VERMONT

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

b. Dr. Pitmon states that over the next several months, Respondent called or visited Alpine Dental several times requesting more narcotic pain medication stating she "had an appointment soon" for the extraction but need medication for pain in the meantime. On or about November 15, 2012, January 24, 2014, and January 28, 2014, Respondent received prescriptions for Hydrocodone from Dr. Pitmon.

c. On or about February 8, 2013, Respondent did have the tooth extraction.

d. Approximately 8 weeks after extraction, on April 8, 2013, Dr. Pitmon noted that he was "suspicious" of fraud on the part of Respondent because she was still calling and complaining of jaw pain, requesting narcotic pain medication.

15. Respondent's tooth extraction took place at Champlain Valley Oral and Maxillofacial Surgery.

a. On or about February 25, 2013, March 4, 2013, and March 7, 2013, Respondent called Champlain Valley Oral and Maxillofacial Surgery and advised she was in NY on her way to Florida and would need early refills of her narcotic pain medication.

b. On or about March 11, 2013, Respondent was seen by Dr. James Freeman who noted in Respondent's records that the extraction site had no signs of infection and appeared to be healing well.

c. On or about March 12, 2013, Respondent called the office requesting something "stronger" for pain. No prescription was given to Respondent at that time.

d. On or about March 13, 2013, Respondent again called the office seeking a stronger pain medication. No prescription was given to Respondent at that time.

16. On or about April 12, 2013, Respondent visited Richmond Family Medicine seeking pain medication for sciatica. Respondent did not report to APRN Elisa Vandervort that she had ever obtained narcotics elsewhere and listed only Tylenol and Ibuprofen as her active medications. On or about April 12, 2013 and May 3, 2013, APRN Vandervort prescribed Hydrocodone for Respondent.

17. On or about June 28, 2013, Respondent saw Physicians Assistant Jaclyn Houghton of Colchester Family Practice, seeking narcotic medication for back pain.

a. PA Houghton researched Respondent's narcotic prescription history and discovered Respondent did not disclose to her the recent narcotic prescriptions she received for her dental work.

b. PA Houghton only prescribed narcotic medication to Respondent after she signed a narcotic contract with the practice requiring random urinalysis, drug counts, and being forthcoming about other medications being prescribed.

STATE OF VERMONT

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

c. On or about August 30, 2013, PA Houghton required a random urinalysis to be provided by Respondent. The results showed a positive result for Oxycodone and Oxymorphone, neither of which were prescribed by Houghton.

d. PA Houghton discontinued prescribing narcotics to Respondent at that time.

18. On or about December 6, 2013, Respondent approached Dr. Teig Marco at the nursing station while working at GMNR. Respondent convinced Dr. Marco to prescribe her 90 Hydrocodone pills for reported sciatic pain. Dr. Marco prescribed her medication based on her verbal representation of pain. Thereafter, on or about January 2, 2014 and January 31, 2014, Dr. Marco renewed Respondent's Hydrocodone prescriptions.

19. Through the course of this investigation, OPR Investigator John Lewis requested prescription profiles for Respondent from Chittenden and Franklin county pharmacies related to the GMNR diversion allegations. Lewis also received Respondent's prescription profiles from Rite Aid Pharmacy, Community Health Pharmacy, Kinney Drugs, Lakeside Pharmacy, CVS Pharmacy and Respondent's prescription history from Vermont Health Access which tracks Medicare/Medicaid and VHAP disbursements. These profiles revealed that Respondent had been prescribed narotics routinely from 2003 through the end of 2013. Respondent used different methods for payment such as cash or VHAP claims. Respondent also utilized a variety of family members and others to pick up the prescriptions on her behalf.

**Violations**

20. 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) 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause); incorporating ARBN Part 11.2(b) ("Inability to practice nursing competently" includes: (1) performance of unsafe or unacceptable patient care; and (2) failure to conform to the essential standards of acceptable and prevailing nursing practice) and ARBN Part 11.2(c) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals, or any other type of materials);

b) 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);

c) 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records; or willfully failing to file the proper reports or records);

d) 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,

STATE OF VERMONT

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

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); and

e) 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).

21. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove these charges by a preponderance of the evidence if this matter went to a hearing, AND THE BOARD ACCEPTED THE STATES EVIDENCE AS TRUE

22. 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.

23. 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.

24. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

25. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.

26. 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.

27. 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.

28. 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:

STATE OF VERMONT

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

A. The Board of Nursing hereby **INDEFINITELY SUSPENDS** Respondent's license. Within forty-five (45) days of requesting reinstatement, Respondent must:

1) Obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board ("Independent Evaluator") and who has verified receipt of this Order, the results of which must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients;

2) Submit to the Board the results of a minimum of three (3) random urine analyses, collected in an observed setting; administered by a person or entity that has been pre-approved by the Board; and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board, the results of which shall be negative; failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed positive;

3) If recommended by Independent Evaluator, enter into a treating professional agreement and substance abuse treatment plan with a treating professional(s) pre-approved by the Board.

Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF THREE (3) YEARS** commencing with the date of reinstatement. The conditions will be 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 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. Respondent shall be prohibited from working more than forty (40) hours per week.

3. Completion of Substance Abuse Counseling, Treatment Plan, Treatment Reports and recovery groups. If recommended by Independent Evaluator, Respondent shall enter into and continue substance abuse counseling and comply with substance abuse treatment plan until the pre-approved treating professional certifies in writing to the Board that such counseling is no longer necessary.

   Respondent shall authorize Respondent's treating professional to submit to the Board **monthly** reports on forms issued by the Board. Respondent shall authorize Respondent's treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

STATE OF VERMONT

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

If recommended by Independent Evaluator, Respondent shall participate as recommended by Respondent's treating professional in substance abuse recovery group(s), and shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

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 cause that screen to be presumed positive. Any positive screen shall constitute a violation of this Order.

5. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.

6. Drug Use Exception. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent health care practitioner shall inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Additionally, the practitioner shall inform the Board 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.

   The Board or its designee may request that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. 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.

   Respondent shall provide the Board with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Board within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications.

7. 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

STATE OF VERMONT

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

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.

8. 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. 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 (ie., consistently meeting all standards of nursing practice) and attendance.

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.

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) after the date of reinstatement.

    In any such petition, Respondent must demonstrate, to the satisfaction of the Nursing Board or its designee, that Respondent can safely and competently administer such medications. Respondent 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.

STATE OF VERMONT

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

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.

11. Types of Employment Prohibited. Respondent shall not work in a supervisory role. 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 Consent Order.

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

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. 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.

16. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.

17. Release of Information Forms. This Order requires Respondent to authorize 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 of this information may be provided to the Office of Professional Regulation investigators, and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

STATE OF VERMONT

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

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing 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 understands that 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 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 must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order. Respondent must also present proof of successful substance abuse rehabilitation, that Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.

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

Dated: 3/6/15

RESPONDENT

By: Penny Verwey

Penny Verwey

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

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing 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 understands that 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 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 must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order. Respondent must also present proof of successful substance abuse rehabilitation, that Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.

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:

Dated: 3·6·15

STATE OF VERMONT
SECRETARY OF STATE

By: Annika Green
Annika Green
State Prosecuting Attorney

STATE OF VERMONT

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

Dated: 3/6/15

RESPONDENT'S ATTORNEY

By: _____
Karen Shingler, Esq.

APPROVED AND SO ORDERED:

Dated: 3/25/15

Date of Entry: 3/27/15

VERMONT BOARD OF NURSING

By: Janine Carr
Chairperson

STATE OF VERMONT

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

**STATE OF VERMONT**
**BOARD OF NURSING**

| | | |
|---|---|---|
| In re: Penny Verwey<br>License No. 025-89224 | }<br>}<br>} | Docket No. 2013-767(LPN) |

**DECISION ON REQUEST FOR SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting Attorney: Annika Green
for Respondent: Karen Shingler

Presiding Officer: Larry S. Novins

**Summary Suspension Order**
**Findings of Fact, Conclusions of Law, and Order**

On April 14, 2014 this matter came before the Board of Nursing on a Request for a Summary Suspension. The hearing was held at the Capitol Plaza in Montpelier, Vermont. Ms. Verwey appeared with counsel. 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. 3 V.S.A. § 814(c).

**Findings of Fact**

Based on the evidence presented at the hearing, the Board finds:

1. Ms. Verwey is a licensed practical nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1582(a) nurses and applicants, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. On March 28, 2014 the prosecutor has filed a "Request for Summary Suspension." A copy of the Request is attached to this Decision and Order. The Request alleges that Ms. Verwey diverted narcotic drugs from her place of employment.
3. The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency action.
4. Notice of this hearing was sent to Ms. Verwey at her last known address. She received the request and through counsel filed a Motion to Continue the hearing which was denied by the Presiding Officer.
5. The Board finds for purposes of this hearing that Ms. Verwey diverted narcotics at her

then place of employment.

6. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.

7. The evidence presented does imperatively require emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent Ms. Verwey from using her license to obtain new employment where she may take drugs intended for her patients. Summary suspension is necessary to prevent harm to the patients and the public. If summary suspension is not ordered, Ms. Verwey will be in a position to use her license in a manner where harm to patients can occur.

## Conclusions of Law

Our Findings of Fact and Conclusions of Law in this Summary Suspension hearing are for purposes of deciding whether ***at this time*** there is an imperative need to take emergency action. 3 V.S.A. § 814(c). Our Findings of Fact and Conclusions of Law herein are for purposes of this Order only.

The Prosecutor's Request for a Summary Suspension is supported by the evidence presented. The Board concludes that the allegations in the Request for Summary Suspension have been established to the necessary degree. For purposes of this Summary Suspension Hearing, the Findings of Fact above do support Summary Suspension of Ms. Verwey's license. There is an imperative need to take emergency action. 3 V.S.A. § 814(c).

Vermont law requires that unprofessional charges be filed promptly with Ms. Verwey being afforded a prompt hearing. At any merits hearing in this matter, the prosecutor will bear the burden of proving unprofessional conduct. Our Findings and Conclusions in this matter will not absolve the prosecution or Ms. Verwey from producing or challenging relevant evidence at a merits hearing. The Findings of Fact and Conclusions of Law at a contested hearing will be based exclusively on the evidence admitted at that hearing.

## Order

The Request for Summary Suspension is **Granted.** Ms. Verwey's license is summarily suspended pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

## 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 Street, 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. To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: April 14, 2014

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/17/14

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

| | | |
|---|---|---|
| **IN RE:** | ) | |
| **PENNY VERWEY** | ) | **Docket No. 2013-767** |
| **License No. 025.0089224** | ) | |

## REQUEST FOR SUMMARY SUSPENSION

### 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; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

2. The Board of Nursing is authorized by 3 V.S.A. § 814 to summarily suspend the license of a nurse when it finds that the public health, safety, or welfare imperatively requires emergency action.

### Statement of Facts

3. Penny Verwey (the "Respondent") of Georgia, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025. 0089224. This license is currently set to expire on or about January 31, 2016.

4. At all times relevant, Respondent was employed at Green Mountain Nursing and Rehabilitation ("GMNR") in Colchester, Vermont.

5. On December 30, 2013, the Office of Professional Regulation ("OPR") received a drug diversion report from the Administrator at GMNR alleging that Respondent had been diverting narcotics. OPR Investigator John Lewis thereafter began an investigation that revealed dozens of instances of suspected drug diversion by Respondent. Respondent used several different methods of diversion, including, but not limited to:

### Facts re: Wasting Narcotic Medications

6. Review of patient records, narcotic logs and medication administration records revealed that: on or about October 12, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

STATE OF VERMONT

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

7. On or about October 25, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

8. On or about November 11, 2013, Respondent documented wasting patient GJ's Vicodin. The entry was not co-signed.

**Facts re: "As needed" or "PRN" narcotics**

9. GMNR utilizes a Pain Monitoring/Pain Management Flow Sheet for nurses to use to document a patient's pain severity, measured from 1 to 10. When a nurse at GMNR administers an as-needed dose of a narcotic to a patient requesting it, the nurse must document the patient's numeric pain level, withdraw the narcotic from the narcotic box and note the withdrawal on the narcotic cart log. As-needed medications also require a nursing note to more clearly state the reasons for the as-needed dose.

10. On or about August 2, 2013, October 16, 2013 and November 28, 2013, Respondent documented as-needed narcotic cart withdrawals to resident S.F., but did not initial the MAR and did not document the reason on the back of the nursing notes. For the 8/2 and 11/28 doses of Vicodin to S.F., Respondent failed to document the reason for the administration as required. For the 10/16 dose, Respondent noted S.F.'s pain at zero but documented that S.F. was in pain and she medicated her.

**Facts re: Diverting Narcotics from Patients**

11. On or about May 8, 2013 at approximately 1400 hours, staff volunteer, K.T. and LNA K.M. observed Respondent enter the narcotic box on the medication cart, remove medication, put it in her mouth and start chewing. Respondent told K.T. she was consuming Percocet "for her teeth" and threatened both K.T. and K.M. if they reported her.

12. Within approximately a week after May 8, 2013, K.T. observed Respondent again enter the narcotic box, remove medication and place the medication into her pocket.

13. Later that same week, K.T. observed Respondent remove a medication card from the narcotic box, remove a medication and place the medication into her purse before returning the card to the narcotic box.

14. Pursuant to the provisions of Title 18 V.S.A.§§4201-4202, the Vermont Board of Health designates regulated drugs for purposes of Title 18, Chapter 84. Vermont Health Regulations, Regulated Drugs, Part II designates Vicodin as a narcotic.

**Request for Relief**

15. The facts as set out above establish that in order to protect the public health, safety, or welfare of the people of the State of Vermont, emergency action is imperative.

STATE OF VERMONT

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

16. The above acts and circumstances, alone or in combination, violate:

a. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause); incorporating ARBN Part 11.2(b) ("Inability to practice nursing competently" includes: (1) performance of unsafe or unacceptable patient care; and (2) failure to conform to the essential standards of acceptable and prevailing nursing practice) and ARBN Part 11.2(c) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals, or any other type of materials);

b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);

c. 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records; or willfully failing to file the proper reports or records);

d. 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); and

e. 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).

**WHEREFORE**, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0089224 be summarily suspended, pending a hearing on the merits.

**DATED** at Montpelier, Vermont this 28th day of March, 2014.

STATE OF VERMONT
SECRETARY OF STATE

By: Annika Green
Annika Green
State Prosecuting Attorney

STATE OF VERMONT

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