

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

IN RE:)
MARGIE B. YODER) **Docket No. NU09-0806**
License No. 026-0016108)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, through State Prosecuting Attorney, Edward G. Adrian, and the Respondent, Margie B. Yoder, R.N., 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, 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. Margie B. Yoder (the Respondent) of Plainfield, Vermont is a registered nurse holding license number 026-0016108, issued by the State of Vermont. This license is set to expire on March 31, 2007. The Respondent's license was previously summarily suspended by this Board on or about September 12, 1994 and conditioned on or about December 14, 1995. This disciplinary action was based on narcotic diversion.
3. During the relevant time period the Respondent was employed as a nurse by Berlin Health and Rehabilitation Center in Berlin, Vermont (the Facility). On or about the middle of July, 2006 staff at the Facility started noticing that Fentanyl patches were missing from resident E.M. Fentanyl patches are Schedule II controlled substances. The above referenced patches were missing and the documentation required by the Facility had not been completed to document the missing status.
4. During an undercover investigation conducted by the Attorney General's Medicaid Fraud and Residential Abuse Unit on August 15, 2006 it was discovered that the Respondent administered a Fentanyl patch to patient I.S. that had been tampered with and was missing the narcotic.

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5. Shortly after the incident with I.S. occurred, the Respondent was confronted and admitted that she recently relapsed into drug addicted behavior. The Respondent admitted to diverting PRN narcotics from various Facility residents including two Dilaudid pills from patient M.G. the afternoon of August 15, 2006. This was confirmed by a narcotic count. The Respondent also admitted to chewing on the Fentanyl patch she had removed from I.S. that same day. The Respondent admitted to ingesting Fentanyl patch over a several month period. The Respondent indicated to the investigators that she was relieved that she had been caught and that she needed help.

6. The Respondent admitted to ingesting Fentanyl patches belonging to R.F. over a several month period.

8. The Respondent's license was summarily suspended by the Board on or about November 13, 2006.

Charges

9. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

- i. 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);
- ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
- iii. Vermont Board of Nursing Administrative Rules Chapter 4, Rule IV, II, 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);
- iv. 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); and
- v. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public).

Understandings

10. 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.

11. 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.

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

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13. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
14. 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.
15. 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.
16. 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 **INDEFINITELY SUSPENDS** (but for a minimum period of six months) the Respondent's license to practice nursing. Before applying for reinstatement, Respondent must (1) obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board; and (2) the results of the treatment with the drug and alcohol abuse evaluator must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients. The Respondent's license shall not be reinstated until these prerequisites are met, regardless of whether more than six (6) months have passed since the suspension went into effect. Once reinstated, Respondent's license will be **CONDITIONED FOR THREE (3) YEARS**. The conditions will be as follows:

(1) License to be labeled "Conditioned".

Any license issued to the Respondent by this Board shall be 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 registered nursing practice in which Respondent works at least forty (40) hours every two (2) weeks as a registered nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis.

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

Respondent shall enter into and continue 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 her treating professional and cause her 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 her 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 **monthly** thereafter.

Respondent shall authorize her 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.

(6) Participation in Recovery Groups.

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

(7) 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 and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(8) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(9) for the period of time described in paragraph A.(2).

(9) Drug Use Exception.

The 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

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14 days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order 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.

(10) Interview with the Board or its Designee.

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

(11) 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 registered 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 registered 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 the Respondent is attending a nursing program, 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 the conditions in the Consent Order during clinical experience.

(12) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of registered nursing employment and **monthly** thereafter, Respondent shall cause every registered nursing employer the 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.

(13) Practice Under Supervision.

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

(14) Types of Employment Prohibited.

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 effective period of this Consent Order.

(15) Administration of Medications.

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Respondent is prohibited from administering any controlled substances. This condition may be removed only by the Respondent filing a petition with the Board after she has worked as nurse for twelve (12) weeks for at least 40 hours 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 she can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from her treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

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

Within five (5) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of her 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.

(17) 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.

(18) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont registered nursing license within thirty (30) days of the date of entry of this Order. 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 as a registered nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(20) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also 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

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information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's registered nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that her treatment provider may require her to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(21) Costs.

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

(22) 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.

(23) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order and that she can safely and competently perform the duties of a registered nurse.

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

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Dated:

2/12/07

By:

Edward G. Adrian
State Prosecuting Attorney

MARGIE B. YODER
RESPONDENT

Dated:

2/9/07

By:

Margie B. Yoder

APPROVED AND SO ORDERED:
VERMONT BOARD OF NURSING

Dated:

3/12/07

By:

Linda Rice APRN
Chairperson

Date of Entry:

3/16/07

nu.yoder.stip

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SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

IN RE:)
MARGIE B. YODER) Docket No. NU09-0806
License No. 026-0016108)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Margie B. Yoder, R.N.:

Board Authority

1. The Vermont State Board of Nursing ("the Board") has authority to issue warnings or reprimands, suspend, revoke, limit, 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. Margie B. Yoder (the "Respondent") of Plainfield, Vermont is a registered nurse holding license number 026-0016108, issued by the State of Vermont. This license is set to expire on March 31, 2007. The Respondent's license was previously summarily suspended by this Board on or about September 12, 1994 and conditioned on or about December 14, 1995. This disciplinary action was based on narcotic diversion.

3. During the relevant time period the Respondent was employed as a nurse by Berlin Health and Rehabilitation Center in Berlin, Vermont (the "Facility"). On or about the middle of July, 2006 staff at the Facility started noticing that Fentanyl patches were missing from resident E.M. Fentanyl patches are Schedule II controlled substances. The above referenced patches were missing and the documentation required by the Facility had not been completed to document the missing status. The Respondent was working on each of the dates the patches were noticed as missing.

4. On or about August 12, 2006 the Fentanyl patch placed by the Respondent on patient M.G. was observed as being slit open and the narcotic removed. The Fentanyl patch for patient N.A. was in the same condition.

5. During an undercover investigation conducted by the Attorney General's Medicaid Fraud and Residential Abuse Unit on August 15, 2006 it was discovered that the Respondent

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administered a Fentanyl patch to patient I.S. that had been tampered with and was missing the narcotic.

6. Shortly after the incident with I.S. occurred, the Respondent was confronted and admitted that she recently relapsed into drug addicted behavior. The Respondent admitted to diverting PRN narcotics from various Facility residents including two Dilauded pills from patient M.G. the afternoon of August 15, 2006. This was confirmed by a narcotic count. The Respondent also admitted to chewing on the Fentanyl patch she had removed from I.S. that same day. The Respondent admitted to ingesting Fentanyl patch over a several month period. The Respondent indicated to the investigators that she was relieved that she had been caught and that she needed help.

7. The Respondent admitted to ingesting Fentanyl patches belonging to R.F. over a several month period. It was discovered by facility personnel that between February 2006 and July, 2006 patient R.F. was noted to have increased agitation. Consequently over this time period, R.F.'s Fentanyl patch dosage was increased from 62 mcg to 75 mcg to 100 mcg. On August 16, 2006, two days after the Respondent left the facility, R.F. was found to have increased sedation and the dosage was reduced to 75 mcg.

8. No Fentanyl patches were found to have been tampered with after the Respondent left the Facility.

9. The Respondent's license was summarily suspended by the Board on or about November 13, 2006.

Charges

10. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

- i. 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);
- ii. 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause);
- iii. Vermont Board of Nursing Administrative Rules Chapter 4, Rule IV, II, 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);
- iv. 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); and
- v. 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public).

Relief Requested

WHEREFORE, the license of Margie B. Yoder should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

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DATED at Montpelier, Vermont this 17th day of November, 2006

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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