

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

**IN RE: BRIAN BADGLEY
 LICENSE NO. 033.0115853**

DOCKET NOS. 2021-105 & 2023-72

Appearances:

Prosecutor: Ultan Doyle, Esq.
Respondent: Brian Badgley, *pro se*

Hearing Officer: Wesley M. Lawrence

ORDER ON MOTION FOR DEFAULT

Based on the evidence before me, I find as follows:

1. At all relevant times, Respondent, Brian Badgley, was licensed in Vermont as a Pharmacist.
2. I held a Default Hearing in the above matter on June 21, 2023 pursuant to 3 V.S.A. §129(f) and 3 V.S.A. §809(d). This public hearing was held electronically via Microsoft Teams pursuant to a Notice of Hearing.
3. The State moved for Respondent to be found in default because he has not responded to the Specification of Charges in this matter.
4. Respondent stipulated that he had proper notice of both the Specification of Charges and Default Hearing. He stated that he received both notices. He stated that because he did not plan to contest the charges, he did not realize that any response was necessary.
5. Respondent indicated that he did not wish to contest the charges against him, and did not wish to answer the Specification of Charges, or have a hearing to dispute the charges against him. I find his waiver of these rights to be voluntary and carefully considered.
6. I find Respondent to be in default consistent with Administrative Rules of the Office of Professional Regulation, Rule 3.4 and/or to have stipulated on the record to the Specification of Charges against him. The allegations contained in the Specification of Charges are therefore

treated as the facts upon which the Board of Pharmacy may issue an order of professional discipline. *See* OPR Rule 3.4, 3 V.S.A. §809(d), and 3 V.S.A. §814(c).

7. I shall treat all factual allegations in the Specification of Charges as proven. *See* O.P.R. Rule 3.4.
8. I find, therefore, that Respondent committed five (5) violations as set forth at length in the Specification of Charges, specifically:
 - 3 V.S.A. §129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice.);
 - 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);
 - 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);
 - 3 V.S.A. §129a(a)(1) (fraudulent or deceptive procurement or use of a license); and
 - 3 V.S.A. §129a(a)(10) (conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession).
9. The State recommended that the Respondent's license be Revoked. I agree that this is the appropriate sanction.
10. Accordingly, the Board of Pharmacy may find, based on the foregoing, that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges and set forth above, and that Respondent's license may be sanctioned consistent with the above.

PROPOSED ORDER

Consistent with the above, and the recommendation of the State, the Board of Pharmacy hereby **ORDERS** that the Respondent's license be **REVOKED**.

I hereby forward the above Proposed Order to the Board of Pharmacy with the recommendation that the Board approve it.

DATED at Montpelier, Vermont this 21st day of June 2023.



Wesley M. Lawrence
Hearing Officer, Vermont Board of Pharmacy

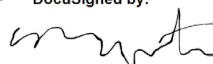
The Vermont Board of Pharmacy, or the Director of the Office of Professional Regulation, considered the Proposed Order and its basis, above, on June 28th, 2023.

After considering the Proposed Order and its basis, above, the Board of Pharmacy takes the following action:

- ☐ Rejects the Hearing Officer's recommendation, and schedules the matter for hearing.
- ☐ Schedules the matter for additional evidence.
- ☐ Accepts the Hearing Officer's recommendation and orders the recommended discipline as set forth in the Proposed Order above.

SO ORDERED,

Vermont Board of Pharmacy or Director of the Office of Professional Regulation.

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Vermont Board of Pharmacy

OFFICE OF PROFESSIONAL REGULATION DATE OF ENTRY: 6/28/2023

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Pharmacy. A party aggrieved by a final decision of a board or hearing authority 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, Floor 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.

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IN RE:	)	
BRIAN BADGLEY	)	Docket No. 2021-105
License No.: 033.0115853	)	Docket No. 2023-72

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont, by and through State Prosecuting Attorney, Ultan Doyle, and makes the following charges against Respondent, Brian Badgley:

Board Authority

1. The Vermont Board of Pharmacy ("Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition licenses and registrations; or prevent the renewal of licenses and registrations and to deny licensure or registration if, after disciplinary hearing, the Board finds that Respondent has engaged in unprofessional conduct pursuant to 3 V.S.A. §§129, 129a; 26 V.S.A. Chapter 36; the Administrative Rules of the Vermont Board of Pharmacy ("BOP Rules"); and the Administrative Rules of the Office of Professional Regulation ("AROPR").

Statement of Facts

2. Brian Badgley ("Respondent") of Waterbury, Vermont, is licensed in the State of Vermont as a Pharmacist under license number 033.0115853. This registration was first issued on October 13, 2015, and expires on July 31, 2023.

2016 Vermont Discipline

3. On December 20, 2016, the Board of Pharmacy entered an Order in docket number 2016-100 conditioning Respondent's license for a minimum of three years due to his diversion of controlled substances and impaired practice.
4. The Board's 2016 Order required Respondent, among other things, to abstain from drug and alcohol use, engage in treatment, submit to random drug and alcohol screenings, and practice only under supervision.
5. The Board removed all conditions on Respondent's license on May 5, 2020.

Diversion in 2021

6. From at least March 2021 through early September 2021, Respondent was the pharmacist manager at a CVS Pharmacy in Berlin, Vermont (the "Facility").

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7. In approximately March 2021, Respondent began diverting controlled substances from the Facility.
8. The Facility confronted Respondent about the diversion on September 2, 2021, after receiving a complaint that Respondent appeared impaired while administering a Covid-19 vaccine on September 1, 2021.
9. Respondent admitted to diverting hydromorphone 8 mg tablets for his own personal use from a 100-count bottle over the course of several months.
10. Between March 2021 and September 2021, Respondent diverted approximately 100 hydromorphone 8 mg tablets for his own personal use.
11. Respondent would document the expected amount of hydromorphone 8 mg tablets as in stock even though he knew the count was off because of his diversion.
12. Respondent also admitted to diverting an unknown amount of liquid hydromorphone 1MG/ML solution from a bottle at the Facility for his own personal use during this same time frame.
13. Respondent ordered the bottle of liquid hydromorphone on behalf of the Facility on July 6, 2021.
14. There was no legitimate reason for the order because the Facility did not have a prescription for the liquid hydromorphone.
15. Respondent told investigators that he would replace the volume of hydromorphone he diverted with distilled water to make it appear full.
16. Subsequent testing of the liquid hydromorphone revealed the presence of Diphenhydramine, an antihistamine, commonly known as Benadryl.
17. Respondent told investigators that he was addicted to opiates and that he began seeing his therapist less often and stopped taking Vivitrol, a drug that helps treat alcohol dependence and blocks the effects of opioids, after his conditions with the Board of Pharmacy ended.

Summary Suspension

18. On September 16, 2021, the State filed a Petition for Summary Suspension of Respondent's pharmacist license based on the facts set forth in Paragraphs 6 through 17 above.
19. On September 21, 2021, the State filed an Amended Petition for Summary Suspension of Respondent's pharmacist license.
20. On September 21, 2021, a contested hearing on the State's petition took place before the Board.

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21. On September 27, 2021, the Board issued an order, granting the State's Petition for Summary Suspension.
22. Respondent's license has remained suspended ever since; however, the investigation continued and yielded additional information regarding Respondent's conduct, which is set forth in Paragraphs 23 through 46 below.

2016 Texas Discipline and 2017 Vermont Renewal

23. On November 1, 2016, the Texas Board of Pharmacy issued an order ("Texas Order"), in which it took disciplinary action against Respondent's pharmacist license by restricting said license.
24. Under the terms of the Texas Order and Texas law, the basis for the disciplinary action cannot be disclosed.
25. On July 20, 2017, Respondent submitted his application for renewal of his Vermont pharmacist license.
26. As part of his application, Respondent was asked the following question:

Since your license was last renewed (or since it was issued if within the last two years): Has Vermont or any other state, federal authority, or any jurisdiction (US or elsewhere) taken any disciplinary action (restricted, suspended, revocation or conditioned) against a license, certificate, or registration you hold or held in any profession or occupation?

27. Respondent disclosed his prior discipline in Vermont (docket number 2016-100).
28. However, Respondent failed to disclose the disciplinary action taken by the Texas Board of Pharmacy.
29. Respondent signed the application for renewal immediately after the following affirmation:

I certify, under the pains and penalties of perjury, that all information I have provided in this application is true and accurate. I understand that furnishing false information may constitute unprofessional conduct and result in the denial of my application for renewal or further disciplinary action. The maximum penalty for perjury is fifteen years in prison and/or a \$10,000 fine. (13 V.S.A. § 2901).

2018 Discipline in Michigan, 2019 Discipline in Arkansas and 2019 Vermont Renewal

30. On June 13, 2018, the Michigan Board of Pharmacy issued a Consent Order in which it limited Respondent's license to practice as a pharmacist as follows:

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Respondent shall not engage in the practice of pharmacy in the state of Michigan until such time as Respondent provides the Department written documentation from the State of Vermont Board of Pharmacy (Vermont Board) verifying that all terms and conditions imposed by the Unprofessional Conduct Decision, executed December 20, 2016, have been removed from Respondent's license.

31. On June 11, 2019, the Arkansas Board of Pharmacy issued a Probation Consent Order in which it suspended Respondent's pharmacist license "until his consent order with the Vermont Board is successfully terminated" and probated the suspension "so long as Respondent remains in full compliance with this Order."
32. On July 30, 2019, Respondent submitted his application for renewal of his Vermont pharmacist license.
33. As part of his application, Respondent was asked the following question:

Since your license was last renewed (or since it was issued if within the last two years): Has Vermont or any other state, federal authority, or any jurisdiction taken any DISCIPLINARY ACTION against (e.g. warned, reprimanded, fined, restricted, conditioned, suspended, or revoked) a license, certificate, or registration that you hold or have held in any profession or occupation, or professional service?

34. Respondent answered, "Yes" and said that discipline had been previously disclosed.
35. Respondent did not disclose the disciplinary actions taken by the Michigan and Arkansas Boards of Pharmacy.
36. Respondent signed the application for renewal immediately after the following attestation:

I certify, under the pains and penalties of perjury, that all information I have provided in this application is true and accurate. I understand that furnishing false information may constitute unprofessional conduct and result in the denial of my application for renewal or further disciplinary action. The maximum penalty for perjury is fifteen years in prison and/or a \$10,000 fine. (13 V.S.A. § 2901).

2019 Alabama Discipline and 2021 Vermont Renewal

37. On September 24, 2019, the Alabama Board of Pharmacy issued a Final Order in which it denied Respondent's application for licensure to practice pharmacy on the basis of the disciplinary taken by Vermont in 2016, his diagnosis of Opiate Use Disorder, and a 2016 Vermont conviction for Unlawful Trespass.
38. On July 30, 2021, Respondent submitted his application for renewal of his Vermont pharmacist license.

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39. As part of his application, Respondent was asked the following question:

Since your license was last renewed (or since it was issued if within the last two years): Have you been DENIED a professional, occupational, or professional services license, certificate, or registration by Vermont or any other state, federal authority, or any jurisdiction?

40. Respondent answered, "No" to this question and did not disclose that the Alabama Board of Nursing had denied his application for licensure to practice pharmacy.

41. As part of his Vermont application, Respondent was also asked the following question: "Are you currently addicted to or in any way dependent on alcohol or habit forming drugs?"

42. Respondent answered, "No" to this question, even though he admitted to investigators that he was an opiate addict and had been diverting Hydromorphone for his own use since March of 2021.

43. Respondent signed the application for renewal immediately after the following attestation:

I certify, under the pains and penalties of perjury, that all information I have provided in this application is true and accurate. I understand that furnishing false information may constitute unprofessional conduct and result in the denial of my application for renewal or further disciplinary action. The maximum penalty for perjury is fifteen years in prison and/or a \$10,000 fine. (13 V.S.A. § 2901).

2022 Federal Criminal Conviction

44. On July 12, 2022, Respondent was convicted in the U.S. District Court District of Vermont of one felony count of Obtaining Possession of Controlled Substances (Hydromorphone Hydrochloride tables and Hydromorphone Hydrochloride solution) by Misrepresentation, Fraud, Deception and Subterfuge in violation of 21 U.S.C. § 843(a)(3).

45. The conviction stemmed from the conduct outlined in paragraphs 6 through 17 above.

46. On November 1, 2022, Respondent received a sentence of 3 years' probation.

Violation One: 3 V.S.A. § 129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice.

47. The State re-alleges and incorporates Paragraphs 2 through 46 above.

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48. The essential standards of acceptable and prevailing practice for pharmacists prohibit them from diverting medications.
49. Respondent failed to meet this standard as demonstrated in Paragraphs 6 through 17 above by diverting controlled substances from the Facility for his own personal use.
50. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(2).

Violation Two: 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.

51. The State re-alleges and incorporates Paragraphs 2 through 46 above.
52. Pharmacists shall not willfully make or file false reports or records in the practice of the profession, willfully impede or obstruct the proper making or filing of reports or records, or willfully fail to file the proper reports or records.
53. Respondent failed to meet this standard as demonstrated in Paragraph 11 above by documenting the expected amount of Facility's hydromorphone 8 mg tablets as in stock even though he knew the count was off because of his diversion.
54. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(7).

Violation Three: 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.

55. The State re-alleges and incorporates Paragraphs 2 through 46 above.
56. As a pharmacist, Respondent is required to exercise his own independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
57. Paragraphs 6 through 17 above demonstrate Respondent's failure to exercise his own professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession by diverting controlled substances from the Facility for his own personal use.
58. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

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Violation Four: 3 V.S.A. § 129a(a)(1) Fraudulent or deceptive procurement or use of a license.

59. The State re-alleges and incorporates Paragraphs 2 through 46 above.
60. As a pharmacist, Respondent is prohibited from the fraudulent or deceptive procurement or use of a license.
61. Paragraphs 23 through 43 above demonstrate Respondent engaged in the fraudulent or deceptive procurement of a license by failing to disclose in his Vermont license renewal applications discipline actions taken against his out-of-state pharmacist licenses.
62. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(1).

Violation Five: 3 V.S.A. §129a(a)(10) Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.

63. The State re-alleges and incorporates Paragraphs 2 through 46 above.
64. Vermont law provides that conviction of a crime related to the practice of the profession or conviction of a felony shall constitute unprofessional conduct.
65. Paragraphs 44 through 46 above demonstrate that Respondent was convicted of a felony, which was related to the practice of his profession.
66. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct of a character likely to deceive, defraud, or harm the public in violation of 3 V.S.A. §129a(a)(10).

Relief Requested

WHEREFORE, the Pharmacist license of Respondent should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 27th day of April, 2023.

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