

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

IN RE:)
MARY C. PION) Docket No. 2012-72
License No. 033.0002918)

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Ed Adrian, and the Respondent, Mary Pion, who stipulate and agree as follows:

Board Authority

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

Stipulated Facts

2. Mary C. Pion ("Respondent") of Saint Albans, Vermont is a licensed pharmacist in the State of Vermont holding license number 033.0002918 which was originally issued on or about October 2, 1985 and is currently set to expire on July 31, 2013.
3. At all times relevant, Respondent worked at the Northwestern Medical Center Pharmacy (the "Pharmacy") located in Saint Albans, Vermont.
4. Pharmacist Manager J.C. reported that in October 2008, the Pharmacy discovered that 5200 doses of Fioricet had been ordered since January 2008 but only 166 doses had been dispensed to patients and employees. J.C. reported the discrepancy to the Office of Professional Regulation, but could not determine who was responsible. J.C. reported that the discrepancies ended after he mentioned them at a staff meeting.
5. Pharmacist Manager J.C. reported that the Respondent was observed on camera on January 23 and 24, 2012, taking Fioricet tablets from a bottle, pouring them in her hand, and walking away. The amount of tablets reported missing was 37.

6. Respondent admitted responsibility for the missing Fioricet in 2008. Respondent stated she stopped taking them after J.C. held a staff meeting asking about the missing medication. Respondent admitted that she began taking the Fioricet from the Pharmacy again in the spring/summer of 2011.

Violations

7. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondents violated:
 - a. The State incorporates paragraphs 4 through 6, 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);
 - b. The State incorporates paragraphs 4 through 6, 3 V.S.A. § 129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
 - c. The State incorporates paragraphs 4 through 6, 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); and
 - d. The State incorporates paragraphs 4 through 6, Board of Pharmacy Rules, Part 20, 20.1(g)(dealing with drugs or devices that the licensee knows or should know are stolen drugs or devices....).

Understandings

8. The parties understand that the terms of this Stipulation and Consent Order are contingent upon review and acceptance by the Board and that if the Board rejects any portion the entire Stipulation and Consent Order shall be null and void.
9. The Respondent has read and reviewed this document fully and agrees that it contains the entire agreement between the parties.
10. This Stipulation and Consent Order is entered into voluntarily by the Respondent after the opportunity to consult with legal counsel. The Respondent has not been coerced by anyone into signing this Stipulation and Consent Order.
11. The Respondent is voluntarily waiving her right to a contested hearing before the Board and waives any right to appeal from this Stipulation and Consent Order.
12. Respondent agrees that the Order set forth below may be entered by the Board.

13. The Respondent agrees to pay any and all costs associated with this Stipulation and Consent Order. Costs as used in this paragraph do not include attorney's fees.

WHEREFORE, the parties agree that the following constitutes a reasonable resolution given the above violations:

ORDER

Based upon the above stipulation, it is **ORDERED AND ADJUDGED** as follows:

A. The Board of Pharmacy hereby **REPRIMANDS** Respondent's license and imposes an **ADMINISTRATIVE PENALTY OF ONE THOUSAND DOLLARS (\$1,000.00)** against the Respondent. This penalty shall be paid within sixty (60) days of the date of entry of this Order.

B. The Board of Pharmacy hereby **CONDITIONS** Respondent's license for a minimum of **two (2) years**. The conditions are as follows:

(1) Re-issue of License.

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

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

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

(3) Reports from Treating Professional.

The Respondent shall authorize and cause her treating professional as referenced in paragraph 2 above, 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 on the treating professional's letterhead. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter. 3 V.S.A. § 131 shall be used in determining whether such records and reports are public records.

Respondent shall authorize her treating professional as referenced in paragraph 2 above, to provide all information requested by the Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(4) Random Drug Testing.

Respondent shall submit to random drug 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 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 act as a violation of this Order.

In situations where the Respondent is employed as the sole pharmacist at a pharmacy, rather than closing the pharmacy, the Respondent shall have until thirty (30) minutes after the end of her shift to report for a random drug test. If the third party designee conducting such testing does not allow the Respondent to take the test based on the third party designee's requirements; and the Respondent misses the test as a result, such missed test will not be considered a violation of this Stipulation and Consent Order.

The Respondent shall provide the Board with her working hours within one (1) week of the date of entry of this Stipulation and anytime they change thereafter.

(5) Abstain from Drug Use.

Respondent shall abstain completely from the consumption or possession of scheduled drugs with the exception of scheduled medications as outlined and referred to in paragraph B(6) for the period of time Respondent remains on conditions. This paragraph shall not apply to scheduled medications that the Respondent may have contact with or access to consistent with her professional obligations as a pharmacist.

(6) Drug Use Exception.

Respondent shall not take schedule I-IV medications or Fioricet (together "scheduled medications") unless medically necessary. Respondent may take scheduled 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 prescription. Respondent shall cause the physician, dentist or nurse practitioner to inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's treatment referred to in paragraph 2 above, within seven (7) days of entering into the practitioner/patient relationship.

The Respondent shall cause this prescribing practitioner to inform the Board, in writing and on appropriate letterhead, 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 at any time that the practitioner document the necessity for the prescribed scheduled medications or other medications known to have abuse potential. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled 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 pursuant to the procedure set forth in paragraph 11 below.

Respondent shall provide the Board with a current scheduled medication list of any scheduled medications taken on a regular or as-needed basis on the treating professional's letterhead within seven (7) days of the date of this order and shall update this list within forty-eight (48) hours of any change in these medications.

(7) Notification to Employers

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 pharmacist 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 pharmacist employment, Respondent shall cause Respondent's immediate supervisor to acknowledge receipt of the Stipulation and Consent Order.

(8) 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 prior to Respondent practicing pharmacy outside the State of Vermont. If Respondent fails to receive such approval before practicing pharmacy outside the State of Vermont, none of the time spent practicing pharmacy 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 pharmacy practice so long as the Respondent can still comply with the provisions of this Consent Order.

If the Respondent receives discipline on a pharmacist license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

(9) 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 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 (including resignation or termination), personal address, or telephone number.

(10) Release of Information Forms.

The conditions of this Order require the Respondent to authorize the drug treatment providers approved by the board as specified in paragraph 2 above (hereinafter “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 information violates the terms of this Order or any rules or laws governing the profession of pharmacy.

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 pharmacist 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.

(11) 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.

(12) Completion of Conditional License Period.

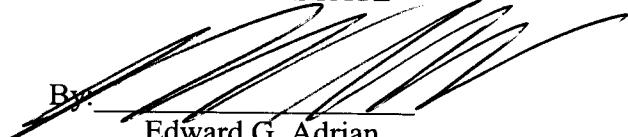
After the conditional license period, the Respondent may petition the Board, or its designee, to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order.

- 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 the Respondent’s licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

Dated: 6/25/12

STATE OF VERMONT
SECRETARY OF STATE

By: 

Edward G. Adrian
State Prosecuting Attorney

Dated: 6/20/12

APPROVED AS TO FORM BY:

Dated: 6/21/12

MARY PION
RESPONDENT

By: 
Mary Pion
ATTORNEY FOR RESPONDENT

By: 
Hobart F. Popick, Esq.

APPROVED AND SO ORDERED:

Dated: 6/27/12

Date of Entry: 6/28/12

VERMONT BOARD OF
PHARMACY

By: 
Chairperson

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