

**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
PHYSICAL THERAPISTS**

In re: AMBER D. BROOKS

License No. 041.0000341

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Docket No. 2018-38

Appearances:

Prosecutor: Jennifer B. Colin, Esq.

Respondent: Did not appear

Administrative Law Officer: George K. Belcher

DEFAULT ORDER

The Administrative Law Officer of the Office of Professional Regulation held a hearing pursuant to 3 VSA Sec. 129(j) in the above matter on September 27, 2018 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is a licensed as a Physical Therapy Assistant and is therefore subject to the regulatory authority of the Office of Professional Regulation. 3 V.S.A. §§ 129, 129a, 3 VSA Sec. 814(d), 26 V.S.A. Chapter 38, and the Administrative Rules relating to Physical Therapists, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on April 10, 2018. The Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to the address of the Respondent which was on file with the Office of Professional Regulation on April 25, 2018. The certified mail notice of charges was returned as signed for by Amber Brooks. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. On September 13, 2018 a notice was sent to the Respondent advising of the hearing before the Hearing Authority to find a default and advising that, "If you wish to contest the charges you must contact the office immediately at (802) 828-2367 and show good cause for failing to answer the charges against you." This notice was mailed by certified mail. The certified mail notice was not returned to the Office of Professional Regulation as of the date of this hearing. The State Prosecutor likewise sent a copy of the Motion for Default to the Respondent on May 29, 2018 to which no answer was made.
5. Respondent has not filed an answer to the charges, nor any communication concerning good cause for failure to answer. The Respondent did not appear at the hearing on default. No contact was made by the Respondent to the attorney for the State indicating

that the Respondent intended to contest the charges. Upon consideration of the Prosecution's presentation and taking notice of the OPR file, the Hearing Officer of the Hearing Authority finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Hearing Authority may issue an order of professional discipline. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).

6. It is specifically found that in February of 2018 while working for Caledonia Home Health and Hospice in Groton, Vermont, during a home visit the Respondent was caught stealing and diverting several Oxycodone tablets from her patient. The Respondent later admitted to the OPR Investigator that she intended to steal the medications for her own use.
7. It was the recommendation of the State of Vermont that the Respondent's license be indefinitely suspended with specific drug and alcohol conditions should the hearing authority later determine that the Respondent's license should be reinstated.

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the file and the Prosecution's presentation. Because Respondent has failed to answer the charges, the factual allegations in the Specification of Charges are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Administrative Law Officer may find, based up the finding of Default from this Default Hearing held pursuant to 3 V.S.A. §809(d), that Respondent has engaged in the unprofessional conduct alleged in the Specification of Charges. The Respondent committed unprofessional conduct by violating 3 VSA Sec. 129a(b)(1) (Failure to practice competently) and 3 VSA Sec. 129a(a)(15) (Failure to exercise independent professional judgement).

Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Hearing Authority does **ORDER** that the Respondent's license be **Indefinitely Suspended**. In the event that the Respondent seeks to regain her license, she must petition for reinstatement. Within forty-five (45) days of requesting reinstatement, Respondent must, at her own cost:

- (a) Obtain an independent substance abuse and mental health evaluation report by a pre-approved licensed professional specializing in drug and alcohol abuse ("Independent Evaluator") who has verified receipt of the Default Order. The results of the Independent Evaluation must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients;
- (b) Submit to the Enforcement Unit Case Manager the results of a minimum of three (3) random urine analyses:
 - (i) When Respondent is ready to petition for reinstatement, Respondent shall contact the Enforcement Unit Case Manager at the Office of Professional

Regulation to set up the urine analysis process and receive instructions. Once registered with the pre-approved person or entity, Respondent will have 45 days to submit to a minimum of three (3) random urine analyses. The process by which Respondent learns whether the Respondent is selected to provide a sample on any given day will be governed by the policy of the pre-approved person or entity conducting the testing at that time;

- (ii) The urine analyses must be collected in an observed setting, administered by a pre-approved lab qualified to analyze samples for forensic purposes, the results of which shall be negative;
- (iii) 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;
- (c) If recommended by an Independent Evaluator, enter into a treating professional agreement and substance abuse treatment plan with a pre-approved treating professional(s) and follow all recommendations.
- (d) If reinstated, Respondent's license **SHALL BE CONDITIONED** pursuant to whatever terms are reasonable at the time of Respondent's reinstatement request, taking into account the independent evaluation, urine analysis results, the facts contained in the Default Order, and any other relevant factors at that time.

SO ORDERED.

By: 
George K. Belcher
Administrative Law Officer

Date: Oct 1, 2018

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 10-1-2018

Appeal Rights

This is a final administrative determination by the Office of Professional Regulation Administrative Law Officer. A party aggrieved by a final decision of a 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 St., Fl. 3, Montpelier, VT 05620-3402 within 30 days of the entry of this Order. The Appeal is to the Vermont Superior Court, Washington Unit, pursuant to 3 VSA Sec. 129(j). The review shall be conducted on the basis of the record created before the Administrative Law Officer.

STATE OF VERMONT
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PHYSICAL THERAPISTS

IN RE:)
Amber D. Brooks) Docket No. 2018-38
License No. 041.0000341)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Amber D. Brooks:

Authority

1. The Administrative Law Officer ("ALO") has jurisdiction to hear matters involving allegations of unprofessional conduct by Physical Therapists pursuant to 3 V.S.A. §§127, 129, 129a; 26 V.S.A. Chapter 38; the Administrative Rules for Physical Therapists (the "ARPT"); and the Rules of the Vermont Office of Professional Regulation ("OPR").

Facts

2. Amber D. Brooks ("Respondent") of Island Pond, Vermont is licensed by the State of Vermont as a Physical Therapy Assistant ("PTA") under license number 041.0000341. This license was originally issued on August 17, 1994, and expires on September 30, 2018.
3. During the relevant period, Respondent was employed by Caledonia Home Health and Hospice ("the Facility") as a Physical Therapy Assistant.
4. On February 14, 2018, Respondent provided physical therapy services to C.C., a patient recovering from shoulder surgery (the "Patient"), at the Patient's home in Groton, Vermont.
5. During the course of Respondent's visit to the Patient's home on February 14, 2018, Respondent directed the Patient to sit in a recliner in the living area while Respondent went to the kitchen area to get an ice pack for the Patient.
6. While in the kitchen unattended, Respondent attempted to steal several Oxycodone 5 mg tablets, which had been prescribed to the Patient for pain management after the Patient's surgery.
7. The Patient walked into the kitchen because the Patient heard pill bottles being disturbed and demanded that Respondent hold out her hands.
8. Respondent held out her hands and showed the Patient several Oxycodone 5mg tablets in her hand.

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9. Respondent admitted to OPR Investigator Dennis Menard that she would have put the Oxycodone tablets into her pocket and used them later if she had not been caught.
10. Respondent further admitted to OPR Investigator Menard that she attempted to steal the Patient's Oxycodone to self-medicate for migraines.

Violation One: 3 V.S.A. §129a(b)(1) 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.

11. The State re-alleges and incorporates Paragraphs 2 through 10 above.
12. As a PTA, Respondent is required to provide safe and acceptable patient care.
13. Paragraphs 3 through 10 demonstrate that Respondent performed unsafe and unacceptable patient care by attempting to steal narcotics prescribed to the Patient for pain management after surgery.
14. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because on multiple occasions Respondent removed pain-relieving patches from the patient for whom they were prescribed, thereby performing unsafe and unacceptable patient care in violation of 3 V.S.A. §129a(b)(1).

Violation Two: 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.

15. The State re-alleges and incorporates Paragraphs 2 through 10 above.
16. As a PTA, Respondent is required to exercise her 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.
17. Paragraphs 3 through 10 demonstrate that Respondent failed to exercise independent professional judgment by attempting to divert narcotics from her Patient to whom they were prescribed.
18. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct by attempting to divert narcotics from her Patient in violation of 3 V.S.A. §129a(a)(15).

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Relief Requested

WHEREFORE, the license of Amber D. Brooks should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 10th day of April, 2018.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

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