



**State of Vermont
Office of the Secretary of State**

Office of Professional Regulation
89 Main Street, 3rd Floor
Montpelier, VT 05620-3402
sos.vermont.gov

**James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary
S. Lauren Hibbert, Director**

August 25, 2021

David Silver, Esq.
1 Catamount Ln
Bennington, VT 05201

Case: In Re Timothy Merrell Davis
Credential: 121.0135433
Docket No. 2021-92

Dear Attorney Silver:

Enclosed please find a copy of the approved *Stipulation and Consent Order*

For questions about complying with this Order, please contact the Case Manager at 802-828-2875

Sincerely,

E-SIGNED by S. Lauren Hibbert
on 2021-08-25 10:34:23 EDT

S. Lauren Hibbert
Director

Enc: *Stipulation and Consent Order*

cc: Michael Kupersmith, Esq., Hearing Officer
Benjamin Novogroski, Esq., Prosecuting Attorney
Carla Preston, Case Manager
David Silver, Esq., Attorney for Respondent, First Class Mail & Email

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

IN RE:)
TIMOTHY M. DAVIS) Docket No. 2021-92
License No. 121.0135433)

VOLUNTARY INDEFINITE SUSPENSION STIPULATION

NOW COME the State of Vermont (the "State"), by and through State Prosecuting Attorney Benjamin E. Novogroski, and the Respondent, Timothy M. Davis (the "Respondent"), by and through his counsel David Silver, Esq., stipulate and agree as follows:

1. To moot summary suspension proceedings under 3 V.S.A. § 814(c) in the matter captioned above, the State and Respondent request that license number 121.0135433 be voluntarily suspended, for an indefinite period, pending adjudication of the above-captioned matter on the merits.
2. This Stipulation is neither an admission of responsibility by the Respondent nor a concession by the State that its Request for Summary Suspension is not well-founded.
3. Proceedings on the merits should be promptly instituted and determined.
4. Respondent understands that this agreement is a matter of public record and that this suspension pending adjudication on the merits may be reported to other licensing authorities, as provided in 3 V.S.A. § 129(a)(6).

ORDER

The Board of Pharmacy hereby suspends license number 121.0135433, pending adjudication on the merits of the matter captioned above.

AGREED TO:

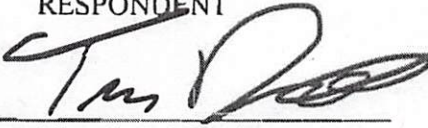
STATE OF VERMONT
SECRETARY OF STATE

Dated: August 17, 2021

By: /s/ Benjamin E. Novogroski
Benjamin E. Novogroski
State Prosecuting Attorney

Dated: 8/13/21

TIMOTHY M. DAVIS
RESPONDENT

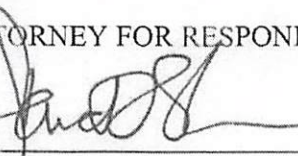
By: 
Timothy M. Davis

Print Name Here: Timothy Davis

APPROVED AS TO FORM:

Dated: 8/17/21

ATTORNEY FOR RESPONDENT


By: 
David Silver, Esq.

Barr, Sternberg, Moss, Silver & Munson, PC

APPROVED AND SO ORDERED:

VERMONT BOARD OF PHARMACY

Dated: August 25, 2021

By: 
Board Chair

E-SIGNED by William Chatoff
on 2021-08-25 10:27:20 EDT

Date of Entry: 8/25/2021

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

IN RE:)
TIMOTHY M. DAVIS) **Docket No. 2021- 92**
License No. 121.0135433)

PETITION FOR SUMMARY SUSPENSION

NOW COMES the State of Vermont (the “State”), by and through State Prosecuting Attorney Benjamin E. Novogroski, and petitions the Board of Pharmacy to summarily suspend the license of Pharmacy Technician Timothy M. Davis. In support of such petition, the State alleges the following:

Board Authority

1. The Vermont Board of Pharmacy (the “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 registrations if, after a disciplinary hearing, the Board finds that the Respondent engaged in unprofessional conduct. 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”).
2. If the Board “finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding t that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.” 3 V.S.A. § 814(c).

Statement of Facts

3. Timothy M. Davis (“Respondent”) of Bennington, Vermont, is registered in the State as a Pharmacy Technician under registration number 121.0135433. This registration was first issued on January 12, 2021 and expires on July 31, 2021.
4. At all relevant times, Respondent was employed as a Pharmacy Technician at Southwestern Vermont Medical Center pharmacy (the “Pharmacy”).
5. Beginning on May 17, 2021, Respondent had access to the Pharmacy’s Pyxis safe to complete routine technician controlled substance fills and medication transfers.
6. In the evening of May 26, 2021, three (3) Oxycodone 5mg tablets were missing from the Pharmacy safe.

7. On May 27, 2021, Pharmacy staff investigated the three (3) missing Oxycodone 5mg tablets.
8. Respondent accessed the Pharmacy safe in a purported attempt to locate the three (3) Oxycodone 5mg tablets.
9. On the morning of May 28, 2021, Pharmacy staff discovered that 13 Oxycodone 10mg tablets were missing from the Pharmacy safe.
10. Two empty blister packs of Oxycontin 10mg tablets were found in the Pharmacy trash.
11. Pharmacy staff then inventoried the Oxycontin 10mg tablets in the Pharmacy safe where it was discovered that the Pharmacy was short two tablets.
12. The entire Pharmacy safe was inventoried to ensure proper accounting of the medications stored within it.
13. The inventory of the Pharmacy safe revealed more missing medications of Oxycontin ER 40mg tablets, Oxycontin ER 20mg tablets, Methylphenidate 10mg tablets, Adderall 5mg, Suboxone 2mg/0.5mg film, and Alprazolam 0.5mg tablets.
14. The Pharmacy conducted an investigation to account for the missing medications.
15. The investigation revealed that Respondent covertly removed the missing medications from the Pharmacy safe and concealed them on his person at various dates and times.
16. On May 24, 2021, Respondent took unauthorized possession of two tablets of Oxycontin ER 20mg from the Pharmacy safe.
17. On May 27, 2021, Respondent took unauthorized possession of Methylphenidate 10mg tablets from the Pharmacy safe.
18. On May 27, 2021, Respondent took unauthorized possession of a sleeve of 10 Oxycontin ER 40mg tablets from the Pharmacy safe.
19. On May 28, 2021, Respondent took unauthorized possession of two (2) Oxycontin 10mg tablets from the Pharmacy safe and ingested them while on duty.

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.

20. The State re-alleges and incorporates Paragraphs 2 through 19 above.

21. The essential standards of acceptable and prevailing practice for Pharmacy Technicians prohibit them from diverting medications.
22. Paragraphs 2 through 19 above demonstrate that Respondent failed to meet this essential standard of acceptable and prevailing practice.
23. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(b)(2).

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 Profession.

24. The State re-alleges and incorporates Paragraphs 2 through 19 above.
25. As a Pharmacy Technician, 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.
26. Paragraphs 2 through 19 above demonstrate that Respondent’s failure to exercise his professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
27. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent committed unprofessional conduct in violation of 3 V.S.A. § 129a(a)(15).

Relief Requested

28. Members of the public, patients, and potential patients have no way of learning Respondent’s dangerous behavior and will remain unprotected during the pendency of these proceedings. The facts set forth above establish that in order to protect the public health, safety, and/or welfare of the people of the State of Vermont, emergency action is imperative.

WHEREFORE, the State of Vermont respectfully requests that, pursuant to 3 V.S.A. § 814(c), Timothy M. Davis’ Pharmacy Technician license, number 121.0135433, be summarily suspended, pending a hearing on the merits.

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DATED at Richmond, Vermont this 11th day of August, 2021.

STATE OF VERMONT
SECRETARY OF STATE

By: *Benjamin E. Novogroski*

Benjamin E. Novogroski
State Prosecuting Attorney
Office of Professional Regulation
802.828.1217
benjamin.novogroski@vermont.gov