STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

NANCY MARIE BERNER, R.N., C.R.N.A. Complaint No. 47-22-000571
License No. 47-04-139977

/CONSENT ORDER AND STIPULATION

CONSENT ORDER

A superseding administrative complaint was filed with the Disciplinary Subcommittee of the Board of Nursing on May 20, 2022, charging Nancy Marie Berner, R.N., C.R.N.A. (Respondent) with having violated sections 16221(a), (b)(i), (b)(vi), and (c)(iv) of the Public Health Code, MCL 333.1101 *et seq*.

Based on the administrative complaint and after consultation with the Chairperson of the Board of Nursing, the Department summarily suspended Respondent's license to practice nursing by order dated May 17, 2022.

The parties have stipulated that the Disciplinary Subcommittee may enter this consent order. The Disciplinary Subcommittee has reviewed the stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding complaint. Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the complaint are true and that Respondent has violated sections 16221(a), (b)(i), (b)(vi), and (c)(iv) of the Public Health Code.

Accordingly, for these violations, IT IS ORDERED:

The order of summary suspension previously issued is DISSOLVED.

Respondent's license to practice nursing is PERMANENTLY SURRENDERED on the effective date of this order. The license shall not be renewed, reinstated, reissued, or reactivated, limited or otherwise, at any future date, nor shall Respondent apply for or otherwise seek licensure under any other provision of the Public Health Code.

Respondent shall direct all communications, except fines, required by the terms of this order to: BPL-Monitoring@michigan.gov.

Respondent is currently subject to criminal prosecution arising out of the same facts as contained in the administrative complaint. If Respondent is criminally convicted, the Department will not bring a new administrative complaint based on the conviction.

Respondent shall be responsible for all costs and expenses incurred in complying with the terms and conditions of this consent order.

Respondent shall be responsible for the timely compliance with the terms of this consent order. Failure to comply within the time limitations provided will constitute a violation of this order.

If Respondent violates any term or condition set forth in this order, Respondent will be in violation of Mich Admin Code, R 338.1632, and section 16221(h) of the Public Health Code.

This order shall be effective on the date signed by the Chairperson of the Disciplinary Subcommittee or the Disciplinary Subcommittee's authorized representative, as set forth below.

Signed on November 3, 2022

MICHIGAN BOARD OF NURSING

By _____ for
Chairperson, Disciplinary
Subcommittee

STIPULATION

The parties stipulate as follows:

1. Respondent does not contest the allegations of fact and law in the complaint. Respondent understands that, by pleading no contest, she does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the complaint and may enter an order treating the allegations as true.

2. Respondent understands and intends that, by signing this stipulation, she is waiving the right under the Public Health Code, rules promulgated under the Public Health Code, and the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, to require the Department to prove the charges set forth in the complaint by presentation of evidence and legal authority, and to present a defense to the charges before the Disciplinary Subcommittee or its authorized representative. Should the Disciplinary Subcommittee reject the proposed consent order, the parties reserve the right to proceed to hearing.

3. The Disciplinary Subcommittee may enter the above consent order. An attorney from the Licensing and Regulation Division may discuss this matter with the Disciplinary Subcommittee in order to recommend acceptance of this resolution.

4. The parties considered the following factors in reaching this agreement:

A. Respondent desired to permanently surrender her license as part of a plea offer in the criminal case arising out of the underlying conduct.

By signing this stipulation, the parties confirm that they have read, understand, and agree with the terms of the consent order.

AGREED TO BY:

/s/ M. Catherine Waskiewicz
M. Catherine Waskiewicz (P73340)
Assistant Attorney General
Attorney for Complainant
Dated: September 23, 2022

AGREED TO BY:

Nancy Marie Berner, R.N., C.R.N.A.
Respondent
Dated: 09-21-2022

Robert J. Andretz (P63994)
Attorney for Respondent
Dated: 9/21/2022

LF: 2022-0349985-A/Berner, Nancy Marie, R.N., C.R.N.A., 000571/Consent Order and Stipulation – 2022-09-12

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In the Matter of

NANCY MARIE BERNER, R.N., C.R.N.A.
License No. 47-04-139977, File No. 47-22-000571

Respondent.

ORDER OF SUMMARY SUSPENSION

The Department filed an *Administrative Complaint* against Respondent as provided by the Public Health Code, MCL 333.1101 *et seq*, the rules promulgated under the Code, and the Administrative Procedures Act, MCL 24.201 *et seq*.

After careful consideration and after consultation with the Chairperson of the Board of Nursing pursuant to MCL 333.16233(5), the Department finds that the public health, safety, and welfare requires emergency action.

Therefore, IT IS ORDERED that Respondent's license to practice as a registered nurse in the state of Michigan is SUMMARILY SUSPENDED, commencing the date this *Order* is served.

Pursuant to Mich Admin Code R. 338.10402 Respondent's specialty certification as a certified registered nurse anesthetist is also suspended.

Under Mich Admin Code, R 792.10702, Respondent may petition for the dissolution of the *Order* by filing a document clearly titled **Petition for Dissolution of Summary Suspension** with the Department by email to BPL-DMS@Michigan.gov**.** If unable to submit a petition for dissolution by email, Respondent may submit by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, MI 48909.

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 5/17/2022

By: Amy Gumbrecht, Director
Bureau of Professional Licensing

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF PROFESSIONAL LICENSING
BOARD OF NURSING
DISCIPLINARY SUBCOMMITTEE

In the Matter of

NANCY MARIE BERNER, R.N., C.R.N.A.
License No. 47-04-139977, File No. 47-22-000571

Respondent.

FIRST SUPERSEDING ADMINISTRATIVE COMPLAINT

The Michigan Department of Licensing and Regulatory Affairs, by Amy Gumbrecht, Director, Bureau of Professional Licensing, complains against Respondent Nancy M. Berner, R.N., C.R.N.A., as follows:

1. The Michigan Board of Nursing is an administrative agency established by the Public Health Code, MCL 333.1101 *et seq.* Pursuant to MCL 333.16226, the Board's Disciplinary Subcommittee (DSC) is empowered to discipline licensees for violations of the Public Health Code.

2. Respondent holds a Michigan license to practice as a registered nurse and holds a specialty certification as a certified registered nurse anesthetist.

3. After consultation with the Board Chairperson, the Department found that the public health, safety, and welfare requires emergency action. Therefore, pursuant to MCL 333.16233(5), the Department summarily suspended Respondent's license to practice as a registered nurse in the state of Michigan, effective upon service of the accompanying *Order of Summary Suspension*. Respondent's specialty certification as a

certified registered nurse anesthetist in the State of Michigan is also suspended pursuant to Mich. Admin. Code R. 338.10402.

4. Fentanyl is an opioid schedule 2 controlled substance. Fentanyl is between 50 and 100 times as potent as morphine.

5. Hydromorphone (e.g., Dilaudid) is a frequently diverted and abused opioid schedule 2 controlled substance.

6. Midazolam (e.g., Versed) is a commonly abused and diverted benzodiazepine schedule 4 controlled substance.

VISION INSTITUTE OF MICHIGAN

7. At all relevant times, Respondent worked as the Director of Nursing at the Vision Institute of Michigan (facility), a surgical center for eye surgery located in Sterling Heights, Michigan.

8. As the director of nursing for the facility Respondent was responsible for ordering all controlled substances, stocking the narcotic cabinet, and keeping the controlled substance records of all orders.

9. On or about February 14, 2022, a facility employee was retrieving an item needed for a patient from a shelf, and a used needle and syringe with blood in it fell off the shelf and onto the floor. The employee brought the needle and syringe to the facility's CEO, who initiated an internal investigation.

10. Staff had noticed that Respondent's behavior recently became erratic, and she would have wide mood swings.

11. Staff had also noticed that Respondent would use the restroom approximately 15-20 times per day. After Respondent left the restroom, a staff member

found alcohol wipes with blood on them and blood by the doorknob and by the toilet paper holder.

12. On or about February 14, 2022, the CEO reviewed security video from that day and witnessed Respondent go to the supply room where the narcotic cabinet is kept, open the narcotic cabinet with her key, remove a box of medication from the narcotic lockbox, and then go to her office. Respondent then left her office without the medication.

13. Facility policy required two nurses be present to open the narcotic cabinet and to document in the narcotic logbook the date, medication, and amount of medication that was added to or removed from the narcotic cabinet.

14. The CEO then reviewed security video from February 7, 2022. At approximately 5:12 a.m., before other employees reported for work, Respondent took a box of medication from her office and placed it in the narcotic cabinet using her key. Respondent did not have another nurse with her when she placed the medication box into the narcotic cabinet, and Respondent did not enter any information into the logbook.

15. On or about February 14, 2022, the CEO met with Respondent to discuss the above incidents. Respondent admitted to accessing the narcotic cabinet without another nurse present. Respondent did not provide a response when confronted with the used syringe with blood on it. The CEO terminated Respondent's employment and notified the police.

16. The CEO ordered an audit of the narcotic cabinet and discovered:

a. Respondent failed to add multiple deliveries of controlled substances to the logbook. For orders of fentanyl and Dilaudid from December 1, 2021 through February 5, 2022, there were 125 vials of fentanyl and

40 vials of Dilaudid that were not entered into the logbook.

b. 165 vials of fentanyl, 75 vials of Versed, and 29 vials of Dilaudid in the controlled substances safe were found to be tampered with and contained unknown liquid in them.

c. The tampered fentanyl vials appeared to be snapped open and glued back together. The seals on the individual syringes of Dilaudid were broken, and the stickers on the syringes no longer lined up like the untampered vials.

d. Security video from the facility showed Respondent on multiple occasions arriving to work before any other employee. Respondent would access the narcotic cabinet alone.

e. Boxes of medication would appear unopened from the top, but at least one box was picked up and the bottom fell out. Upon inspection, the box appeared to have been taped or glued back together.

f. Security video showed Respondent taping and gluing medication boxes closed. A tube of Superglue was found in Respondent's office.

g. Boxes of Dilaudid were supposed to contain 10 vials but some of the tampered boxes contained a different number of vials.

h. A nurse reported that on multiple occasions, Respondent had the nursing staff sign off in the logbook that they had witnessed Respondent putting narcotics in the narcotic cabinet when they had not actually witnessed her adding medication to the narcotic cabinet. Respondent would tell them she had added the narcotics to the cabinet and told the nurses to just sign as witnesses.

17. The CEO ordered a review of Respondent's practice with controlled substances and discovered:

a. Staff members reported that some of Respondent's patients complained of pain during procedures, which did not happen with other C.R.N.A.s that frequently.

b. Surgery records showed that cataract surgery patients were rarely administered fentanyl when an outside anesthesia group conducted anesthesia services; however, Respondent used fentanyl for cataract surgery patients most of the time.

c. Respondent did not document any controlled substances to waste after a surgery. For cataract surgery, Respondent recorded administering fentanyl 100mcg. A surgical nurse stated that Respondent's patients were at times restless during procedures, which should not happen if fentanyl 100mcg were actually administered to the patient. One C.R.N.A. at the facility with 30 years of experience stated that normally 50mcg to 100mcg for cataract surgery is too much and should be seen as a red flag for diversion.

FOOD AND DRUG ADMINISTRATION (FDA) INTERVIEW

18. On or about April 20, 2022, Respondent spoke to an FDA special agent and an assistant U.S. Attorney for the Eastern District of Michigan regarding the events that occurred during her employment at the Vision Institute of Michigan.

19. Respondent admitted to diverting fentanyl and Dilaudid from her employer on multiple occasions starting in the fall of 2021 through her termination on or about February 14, 2022.

20. Respondent stated that she would often be at work alone and accessed the narcotic cabinet by herself. Respondent stated that she started diverting fentanyl but when fentanyl was in short supply, she started diverting Dilaudid.

21. Respondent stated that she would replace the fentanyl or Dilaudid with saline or lidocaine then re-seal the vials and the boxes they came in to conceal her activities.

22. Respondent admitted to cutting boxes open to gain access to the drugs and that she would tape or glue the boxes shut to cover up what she had done. Respondent also used glue on some of the vials to secure the caps back on.

23. Respondent stated that she tried to make sure that the tampered with vials were not used on patients but admitted that it would have been possible for another nurse to access the narcotic cabinet while she was away and unknowingly use the contents of a tampered vial with a patient.

24. Respondent admitted that approximately 85% of the narcotics in the narcotic closet on the day she was terminated were tampered with by her.

25. Respondent admitted that on occasion she also stole excess fentanyl left over after a procedure for personal use.

COUNT I

Respondent's conduct constitutes a violation of a general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, or a condition, conduct, or practice that impairs, or may impair, the ability safely and skillfully to engage in the practice of the health profession in violation of MCL 333.16221(a).

COUNT II

Respondent's conduct, as set forth above, demonstrates Respondent's "departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs", and accordingly "incompetence," in violation of MCL 333.16221(b)(i).

COUNT III

Respondent's conduct demonstrates Respondent's lack of a "propensity . . . to serve the public in the licensed area in a fair, honest, and open manner," MCL 338.41(1), and accordingly a lack of "good moral character," in violation of MCL 333.16221(b)(vi).

COUNT IV

Respondent's conduct constitutes obtaining, possessing, or attempting to obtain or possess a controlled substance or drug without lawful authority, and/or selling, prescribing, giving away, or administering drugs for other than lawful diagnostic or therapeutic purposes, in violation of MCL 333.16221(c)(iv).

The Administrative Complaint previously executed against Respondent on May 17, 2022, is WITHDRAWN and replaced in full by this First Superseding Administrative Complaint. The Order of Summary Suspension executed May 17, 2022, remains in full effect.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to MCL 333.16231(8), Respondent has 30 days from the date of receipt of this Complaint to submit a written response to the allegations contained in it. Pursuant to section 16192(2) of the Code,

Respondent is deemed to be in receipt of the complaint three (3) days after the date of mailing listed in the attached proof of service. The written response shall be submitted by email to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing to BPL-DMS@michigan.gov. If unable to submit a response by email, Respondent may submit by regular mail to the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, P.O. Box 30670, Lansing, MI 48909. Respondent's failure to submit an answer within 30 days is an admission of all Complaint allegations. If Respondent fails to answer, the Department shall transmit this complaint directly to the Board's Disciplinary Subcommittee to impose a sanction pursuant to MCL 333.16231(9).

MICHIGAN DEPARTMENT OF
LICENSING AND REGULATORY AFFAIRS

Dated: 5/20/2022

Pc/jp

By: Amy Gumbrecht, Director
Bureau of Professional Licensing