

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

In re: NATHANIEL JENNE	}	
License No. 026.0141852	}	Docket No. 2024-168 thru 173
	}	

Participating Board Members:

Jennifer Laurent, APRN, Chair
Daniel Coane, Public Member
Luana Tredwell, LPN, *ad hoc* member
Deborah Belcher, Public Member
Jill Neary, LPN
Marsha Arend, RN
Raequel Gordon, LPN
Douglas Sutton, RN, *ad hoc* member
William "Jamie" Floyd, RN

Appearances:

Prosecutor: George Hasselback, Esq.
Respondent: Cabot Teachout, Esq.

Presiding Officer: George K. Belcher

Exhibits:

State Exhibit 1: State of New Hampshire Order of Emergency Suspension 6/7/24
And Verified Petition dated 6/6/24
State Exhibit 2: Certified copy of Information and Affidavit of Probable Cause in
Docket No. 24-9572, Vermont Superior Court, Windsor Unit 6/7/24

**Summary Suspension Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This matter came before the Board of Nursing on a Request for a Summary Suspension. The hearing was held electronically on October 14, 2024, with the Attorney for the State, the Attorney for the Respondent, the Respondent, the witnesses, and the Board members, all participating by telephone or via electronic means pursuant to the Office of Professional Regulation Rules for Remote Hearings.

Findings of Fact

Based on the evidence presented at the hearing and the arguments of counsel, the Vermont Nursing Board finds as follows:

1. Respondent is licensed as a Registered Nurse in the State of Vermont.
2. The Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. 3 V.S.A. § 814(c) permits the Board to summarily suspend a license if it finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order.
3. The prosecutor has filed a “Request for Summary Suspension.” A copy of the Request is attached to this Decision and Order.¹
4. The notice of hearing was sent to Respondent’s counsel on October 4, 2024, by regular mail. There were no objections to notice.
5. The Respondent worked in a medical facility at the Dartmouth-Hitchcock facility in Lebanon, New Hampshire as a registered nurse. In response to an investigation conducted by the hospital, the Respondent admitted to diverting Oxycodone, Dilaudid and Lorazepam between 2/20/24 and 5/27/24.
6. In documents filed with the Vermont Office of Professional Regulation, the Respondent admitted to diversion of drugs in his “self-report” to the office as testified to by the OPR Investigator, Ryan Prince.
7. As a result of the investigation by the hospital, an Order of Emergency suspension of the Respondent’s nursing license in New Hampshire was ordered on June 7, 2024. (Exhibit 1).
8. On or about June 7, 2024, the Respondent was charged with ten counts of Domestic Assault.² The Charges were accompanied by a sworn affidavit of probable cause by Detective Trooper Brandon Groh. The affidavit provides evidence that the Respondent assaulted his daughter between 5/12/23 and 1/25/24 on a number of occasions. Some of the domestic assaults were alleged to have happened while the Respondent was intoxicated.
9. At the hearing counsel argued that the exhibits were inadmissible under the rules of evidence, including inadmissible hearsay, and that the consideration of the information in the exhibits constituted a breach of due process protection. The exhibits were admitted over the objections of the Respondent’s counsel. The Respondent also argued that there was inadequate evidence of an emergency need for summary suspension since there was a delay in the filing of the Request for Summary Suspension from alleged factual incidents. Respondent’s counsel also argued that Investigator Prince testified regarding his investigative report without the investigative report being made available for Respondent’s counsel to view.

¹ The Request for Summary Suspension is dated October 4, 2023, but the Board finds that the date is incorrect and contains a typographical error (one year off). The Board notes that the Notice of hearing was dated on October 4, 2024.

² Probable cause was not found as to Count 5 (unlawful restraint) of the Information.

Conclusions of Law

1. Regarding the issue of the rules of evidence, 3 VSA Sec. 810 provides that the Rules of Evidence shall be followed in administrative contested cases but that when it is necessary to ascertain facts not reasonably susceptible of proof under the rules of evidence, evidence not admissible under the rules of evidence may be admitted if the evidence is the type commonly relied upon by reasonably prudent people in the conduct of their affairs. Clearly, evidence that the Respondent admitted to a hospital investigator that he had diverted medications in the course of his duties as an RN is evidence that would be commonly relied upon in the conduct of nursing administration and regulation. Moreover, where such evidence has been litigated before a sister administrative body of another state, and determined to be a fact of evidence, it would be unduly burdensome and unreasonable to insist that such evidence be provided by the person to whom the admission had been made. This is especially true in proceeding in which there is a request for summary suspension under 3 VSA Sec. 814(c) in which imminent danger to the public is the prerequisite finding for an order. Hearsay, allegations, unresearched facts, and reasonable suspicions can lead an administrative body to make a reasonable finding of imminent danger in the context of summary proceedings. To rule otherwise would negate the “summary” nature of these proceedings. One must remember that the attribute of summary proceedings is that there are more opportunities for litigating the underlying facts in subsequent merits hearings. The Respondent can request review of the summary proceedings after more information is known. See generally, In re Miller, 2009 VT 112, 989 A2d 982 (2009).
2. The Miller case was a case in which a medical doctor’s license to practice medicine was summarily suspended by the Vermont Board of Medical Practice based upon evidence presented to the Board. The doctor had objected to the admission of inadmissible hearsay, use of an investigator’s supplemental affidavit, and inadequate advance notice of the evidence which was presented at the hearing. The Vermont Supreme Court found that the minimum due process standards had been satisfied in that case because: (1) the specification of charges in the case gave adequate advance notice to the respondent of the overall issues; (2) there is a “recognition [by the Court] of an emergency exception to the pre-deprivation hearing requirements” under 3 VSA 814(c); (3) the respondent has the right “to a prompt post-suspension hearing to address the propriety of the Board’s emergency action”; (4) the “relaxed” rules of evidence (if the hearsay is otherwise reliable) had been recognized by the Court in the case of In re Smith, 169 Vt. 162, 586 A.2d 605(1999).
3. The over-arching rule regarding Due Process in the Miller case, is that, unlike some legal rules, due process is not a technical conception with a fixed content unrelated to time, place, and circumstances, but rather it is a flexible one that calls for such procedural protections as the particular situation demands. In light of the urgent need to protect the public from imminent harm and the availability of the post-suspension review and hearing, and the advanced notice to the Respondent of the overall issue presented to the Board, and the ability of the Respondent to challenge the evidence of the State in a meaningful way, Due Process is satisfied.
4. The preceding analysis also applies to the arguments that the admission of the exhibits

(and the findings based on the factual information in them) deny Due Process. Due process is a relative standard which depends upon the property or licensing interest involved and the needs of the state to act in a timely way to protect the public. The admission of the exhibits in such a summary proceeding does not offend the Due Process clause given the added protections of subsequent review, prohibition of using the findings in this case to justify a merits finding, and the ability of the Respondent to seek reconsideration.

5. The Due Process analysis also takes into consideration whether the Respondent has had an opportunity to testify and controvert the allegations brought to the hearing. Here, the Respondent was present but chose not to testify. Counsel for the Respondent argued that the Respondent was not testifying based upon his constitutional rights against self-incrimination. Under our law, a person charged with an administrative allegation may respond, even if there is a pending criminal matter. Such a person may ask for, and receive, use immunity for testimony given. State v. Begins, 147 Vt. 295, 514 A2d 719 (1986).³ In light of the availability of use immunity, the fact that the Respondent had the ability to respond to the allegations at the hearing shows the overall fairness of the process.
6. The argument of the Respondent that there cannot be urgency to this summary suspension request because there was a delay from the incidents to the bringing of the summary suspension request fails. The time it takes for the investigative arm of the Office of Professional Regulation to receive complaints, investigate them, bring them forward, schedule and notice a hearing. Is a movable number depending upon many factors. Once the information and allegations are presented to the Board, it is the facts and evidence which determine urgency and imminent harm to the public. If there is an unreasonable delay in bringing the matter to the attention of the Board, the Board still has the responsibility to rule upon whether “public health, safety, or welfare imperatively requires emergency action.” 3 VSA Sec. 814(c).
7. The evidence established that the Respondent violated: 26 VSA Sec. 1582(a)(2) [diverting or attempting to divert drugs for unauthorized use] and 3 VSA Sec. 129a(a)(28) [Engaging in conduct of a character likely to harm the public].
8. The evidence presented shows facts which imperatively require emergency action for public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm, and to protect the public from harm.
9. The Findings of Fact and Conclusions of Law in this Summary Suspension hearing are for purposes of deciding whether *at this time* there is an imperative need to take emergency action. 3 V.S.A. § 814(c). The Findings of Fact and Conclusions of Law herein are for purposes of this Order only.
10. The Prosecutor’s Request for a Summary Suspension is supported by the evidence presented, and the Findings of Fact above support Summary Suspension of Respondent’s

³ In that case it was held, “ We accordingly declare as a judicial rule of evidence that ... the testimony of a probationer at a probation revocation hearing prior to the disposition of criminal charges arising out of the alleged violation of the conditions of probation, and any evidence derived from such testimony, is inadmissible against the probationer during subsequent proceedings on the related criminal charges, save for the purposes of impeachment or rebuttal where the probationer’s revocation hearing testimony or evidence derived therefrom and his testimony on direct examination at the criminal proceeding are so clearly inconsistent as to warrant the trial court’s admission of the revocation hearing testimony or its fruits in order to reveal to the trier of fact the probability that the probationer has committed perjury at either the trial or the revocation hearing.

- license. There is an imperative need to take emergency action. 3 V.S.A. § 814(c).
11. Vermont law requires that unprofessional charges be filed promptly with Respondent being afforded a prompt hearing. At any merits hearing in this matter, the prosecutor will bear the burden of proving unprofessional conduct. The Findings and Conclusions in this matter will not absolve the prosecution or Respondent from producing or challenging relevant evidence at a merits hearing. The Findings of Fact and Conclusions of Law at a contested hearing will be based exclusively on the evidence admitted at that hearing.

Order

The Request for Summary Suspension is **Granted**. Respondent's license is **Summarily Suspended** and shall not be subject renewal or reinstatement during the period of Summary Suspension without Board approval pending proceedings. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

SO ORDERED.

Vermont Board of Nursing

Signed by:
By: Jennifer Laurent
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Jennifer Laurent, APRN
Chair

Date: 10/19/, 2024

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/20/24

APPEAL RIGHTS

This is a final administrative determination by the Vermont Board of Nursing or Director of the Office of Professional Regulation. 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, Fl. 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.