

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

In re: CHRISTOPHER D. BARBEE	}	
License No. 026.0087161	}	Docket No. 2016-555
	}	Docket No. 2015-138

Appearances:

Prosecutor: Elizabeth St. James, Esq.

Respondent: Did not appear

Hearing Officer: George K. Belcher

DEFAULT ORDER

The Hearing Officer of the Vermont Board of Nursing held a hearing pursuant to 3 VSA Sec. 129(f) in the above matter on July 19, 2017 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 registered nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, and the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. Charges were filed in this matter on April 27, 2017. 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 27, 2017. The certified mail notice was returned to the OPR Office on May 15, 2017, refused; the first class mail notice was returned on May 8, 2017. 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 May 30, 2017 a notice was sent to the Respondent advising of the hearing before the Board 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 and by regular mail. The certified mail notice and the regular mail notice were returned on July 5, 2017, unable to forward.
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

Board finds Respondent to be in Default. The allegations contained in the Specification of Charges are therefore treated as the facts on which the Board 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 the Respondent diverted medication from the medical facility at which he was working in March of 2015 for unauthorized use. It is also specifically found that the Respondent voluntarily surrendered his Oregon nursing license after he became non-compliant with an intensive outpatient treatment program for alcohol use in September of 2016. Pursuant to the voluntary surrender of his license in Oregon, the Respondent informed the Oregon Nursing Board that he did not believe that he was fit to practice nursing “at this time”.
7. It was the recommendation of the State of Vermont that the Respondent’s license be indefinitely suspended with conditions should the Board later determine that the Respondent’s license should be reinstated. Those recommended conditions are as follows:

Conclusions of Law

Respondent has received adequate or constructive notice of the charges in this matter as indicated by the Board’s 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 Board 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 Secs. 129a(a)(5 and 12), 129a(b)(2) and 26 VSA Sec. 1582(a)(2 and 3).

Proposed Order

In accordance with the above Findings of Fact and Conclusions of Law, and consistent with the recommendation by the State, the Board does **ORDER** that the Respondent’s license be **Indefinitely Suspended**. In the event that the Respondent petitions for reinstatement of her license as a nurse in the State of Vermont, she must petition for reinstatement. Within forty-five (45) days of requesting reinstatement, Respondent must, at her own cost:

- (a) Obtain an independent 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.

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.

The Hearing Officer reports the above facts, conclusions of law, and the finding of DEFAULT to the Board with the recommendation that the Board approve them and enter the Order as above.

Dated this 21st day of July, 2017.


George K. Belcher
Hearing Officer of the Vermont Board of Nursing

The Vermont Board of Nursing considered the report of findings of fact and conclusions of law at its meeting on 8/14/17. After considering the report, the Board takes the following action:

- / / Rejects the report and schedules the matter for hearing.
- / / Schedules the matter for additional evidence.
- / ☒ Accepts the report, adopts the findings of fact and conclusions of law, and orders the recommended discipline as set forth in the proposed order above.

SO ORDERED.

Vermont Board of Nursing

By: 
Jeanine Carr, Chair
Vermont Board of Nursing

Date: 8/14/17, 2017

OFFICE OF PROFESSIONAL REGULATION
DATE OF ENTRY: 8/15/17

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. A party aggrieved by a final decision of a board 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. 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.

**STATE OF VERMONT
SECRETARY OF STATE
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BOARD OF NURSING**

IN RE:	)	
Christopher D. Barbee	)	Docket Nos. 2015-138
License No. 026.0087161	)	2016-555

SPECIFICATION OF CHARGES

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

Board Authority

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition current licenses; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. § 129(a); 3 V.S.A. § 129a; 3 V.S.A. § 814(d); 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Christopher D. Barbee (the "Respondent") of Springfield, Oregon is licensed by the State of Vermont as a Registered Nurse under license number 026.0087161. This license was originally issued on July 12, 2012, and expired on March 31, 2015. This license is currently inactive.

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3. During the relevant time period, Respondent was employed as a Registered Nurse at Rutland Regional Medical Center ("the Facility") in Rutland, Vermont.
4. On March 20, 2015, the Respondent removed two vials of injectable Ondansetron, an anti-nausea medication, from an Omnicell medication dispensing machine in the Emergency Department of the Facility.
5. There was no physician order for Ondansetron for any patient in the Emergency Department at the time the Respondent pulled this medication.
6. On March 25, 2015, Respondent's roommate, A.M., was found in possession of one vial of injectable Ondansetron by Rutland City Police.

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Prosecuting Attorney
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7. A.M. obtained the Ondansetron from Respondent.
8. The brand name, lot number, and expiration date on the injectable Ondansetron vial found in the possession of A.M. matched the current inventory from the Omnicell machine in the Emergency Department of the Facility.

Violation One: 26 V.S.A. §1582(a)(2) Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

9. The State re-alleges and incorporates Paragraphs 2 through 8 above.
10. Registered Nurses are prohibited from diverting or attempting to divert drugs, equipment, or supplies for unauthorized use.
11. Respondent diverted or attempted to divert drugs, equipment, or supplies for unauthorized use by engaging in the conduct stated in Paragraphs 4 through 8 above.
12. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 26 V.S.A. §1582(a)(2).

Violation Two: 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.

13. The State re-alleges and incorporates Paragraphs 2 through 8 above.
14. The essential standards of acceptable and prevailing practice require Registered Nurses to dispose of all unused medication on premises according to facility policy.
15. The Respondent failed to meet this standard by engaging in the conduct stated in Paragraphs 4 through 8 above.
16. The essential standards of acceptable and prevailing practice prohibit Registered Nurses from taking drugs or supplies from a facility for unauthorized use.
17. Respondent failed to meet this standard by engaging in the conduct stated in Paragraphs 4 through 8 above.
18. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(2).

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Violation Three: 3 V.S.A. §129a(a)(12) 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.

19. The State re-alleges and incorporates Paragraphs 2 through 8 above.
20. As a Registered Nurse, the Respondent is required to exercise his 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.
21. Paragraphs 4 through 8 above demonstrate the Respondent's failure to exercise his own professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
22. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(12).

Violation Four: 26 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

23. The State re-alleges and incorporates Paragraphs 2 through 8 above.
24. As a Registered Nurse, the Respondent has a responsibility to conduct himself honestly and safely in his practice.
25. The Respondent engaged in a character likely to deceive, defraud, or harm the public by engaging in the conduct stated in Paragraphs 4 through 8 above.
26. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 26 V.S.A. §1582(a)(3).

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27. Respondent is also licensed in the State of Oregon as a Registered Nurse under license number 201503613RN.
28. In October 2015, Respondent was approved for entry into the Oregon Health Professional Services Program (HPSP) and entered intensive outpatient treatment due to drug use.
29. On September 7, 2016, the Oregon Board of Nursing issued an order accepting the voluntary surrender of Respondent's Oregon RN License (the "Oregon Order") after Respondent became noncompliant with the Oregon HPSP. See Attachment A.

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30. As of the date of the Oregon Order, Respondent could no longer afford the treatment program.
31. As of the date of the Oregon Order, Respondent did not believe he was fit to practice as an RN.

Violation Five: 3 V.S.A. §129(a)(5) The Board may discipline any licensee or refuse to license any person who has had a license application denied or license revoked, suspended, limited, conditioned or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct.

32. The State re-alleges and incorporates Paragraphs 2 and 27 through 32 above.
33. Paragraphs 27 through 32 above demonstrate that Respondent was disciplined in Oregon for conduct which would constitute unprofessional conduct in the State of Vermont under the following statutes:
34. 3 V.S.A. §129a(a)(5) Practicing the profession when medically or psychologically unfit to do so, demonstrated by Respondent's drug use and own admission listed above.
35. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129(a)(5) incorporating 3 V.S.A. §129a(a)(5).

Relief Requested

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

DATED at Montpelier, Vermont this 27th day of April, 2017.

STATE OF VERMONT
SECRETARY OF STATE

By: Elizabeth A. St. James
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**BEFORE THE OREGON
STATE BOARD OF NURSING**

**In the Matter of
Christopher Barbee, RN**

**) STIPULATED ORDER FOR
) VOLUNTARY SURRENDER
)**

License No. 201503613RN

) Reference No. 16-08141

The Oregon State Board of Nursing (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including Registered Nurses. Christopher Barbee (Licensee) was issued a Registered Nurse License by the Board on June 12, 2015.

On or about August 3, 2015, the Board received information from the Springfield Police Department advising that Licensee was contacted by officers on August 2, 2016 after using drugs. The Board opened an investigation into the matter.

On October 14, 2015 Barbee was approved for entry into the Health Professional Services Program (HPSP).

On October 19, 2015 Barbee entered treatment with Serenity Lane with an Alcohol Abuse diagnosis, moderate and was recommended to enter into an Intensive Outpatient Treatment Program, followed by two years of Recovery Support.

Barbee has informed the Board that he can no longer afford the program costs and does not believe he is fit to practice at this time.

By the above actions, Licensee is subject to discipline pursuant to:

676.200 Board participation in program; rules. (1)(a) A health profession licensing board that is authorized by law to take disciplinary action against licensees may adopt rules opting to participate in the impaired health professional program established under ORS 676.190 and may contract with or designate one or more programs to deliver therapeutic services to its licensees.

(3) A board that participates in the impaired health professional program shall review reports received from the program. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify or revoke the licensee's license or end the licensee's participation in the impaired health professional program.

OAR 678.111 Causes for denial, revocation or suspension of license or probation, reprimand or censure of licensee. In the manner prescribed in ORS chapter 183 for a contested case:

(1) Issuance of the license to practice nursing, whether by examination or by indorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to

such condition as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of the following causes:

(f) Conduct derogatory to the standards of nursing.

OAR 678.112 Impaired health professional program. Persons licensed to practice nursing who elect not to participate in the impaired health professional program established under ORS 676.190 or who fail to comply with the terms of participation shall be reported to the Oregon State Board of Nursing for formal disciplinary action under ORS 678.111, [1991 c.193 §2; 2007 c.335 §1; 2009 c.697 §7; 2009 c.756 §§32,94]

ORS 851-045-0070 Conduct Derogatory to the Standards of Nursing Defined

Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to, the following:

(7) Conduct related to the licensee's relationship with the Board:

(e) Failing to comply with the terms and conditions of Nurse Monitoring Program agreements.

ORS 851-070-0100 Substantial Non-Compliance Criteria

(1) The HPSP will report substantial non-compliance within one business day after the HPSP learns of non-compliance, including but not limited to information that a licensee:

(d) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(k) Violated any provisions of OAR 851-070-0080;

(l) Violated any terms of the diversion agreement; or

(2) The Board, upon being notified of a licensee's substantial non-compliance will investigate and determine the appropriate sanction, which may include a limitation of licensee's practice and any other sanction, up to and including termination from the HPSP and formal discipline.

Licensee wishes to cooperate with the Board in this matter and voluntarily surrender his Registered Nurse license.

Therefore, the following will be proposed to the Oregon State Board of Nursing and is agreed to by Licensee:

That the voluntary surrender of the Registered Nurse license of Christopher Barbee be accepted. If, after a minimum of three years, Mr. Barbee wishes to reinstate his Registered Nurse license, he may submit an application to the Board to request reinstatement.

Licensee agrees that he will not practice as a Registered Nurse from the date he signs this Order.

Licensee understands that this Order will be submitted to the Board of Nursing for its approval and is subject to the Board's confirmation.

Licensee understands that by signing this Stipulated Order, he waives the right to an administrative hearing under ORS 183.310 to 183.540, and to any judicial review or appeal thereof. Licensee acknowledges that no promises, representations, duress or coercion have been used to induce him to sign this Order.

Licensee understands that this Order is a document of public record.

Licensee has read this Stipulated Order, understands this Order completely, and freely signs this Stipulated Order for Voluntary Surrender.

Christopher Barbee
Christopher Barbee, RN RN

August 4, 2016
Date

ORDER

IT IS SO ORDERED:

BOARD OF NURSING FOR THE STATE OF OREGON

Bonnie Kostecky, MS, MPA, RN
Bonnie Kostecky, MS, MPA, RN
Board President

9/7/2016
Date