

116-6611

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

In re Patricia Cady }
License No. 026-0012850 }
Docket No. NU01-0708 }

SUMMARY SUSPENSION ORDER

On Monday 14 July 2008, this matter came before the Vermont State Board of Nursing by petition of the State of Vermont. The State of Vermont seeks a summary suspension of Respondent's professional license pursuant to 3 V.S.A. § 814(c). The hearing took place at the Secretary of State's Office of Professional Regulation, National Life Building, Montpelier, Vermont.

The Board has authority to suspend summarily a license pending further proceedings if it determines that public health, safety or welfare imperatively require emergency action.

**Findings of Fact &
Conclusions of Law:**

Based on a review of the evidence presented at the hearing of this matter, the Board finds:

1. The Board of Nursing licenses the Respondent, and the Respondent is subject to the disciplinary authority of this Board. Title 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a)(3); and the Administrative Rules of the Office of Professional Regulation (OPR Rules).
2. The State filed a "Request for Summary Suspension" dated 7 July 2008, alleging that the Respondent obtained controlled substances through her employer and without a prescription for the period approximately 1999 through June 2008. The State further alleges that the Respondent used a prescription pad that belonged to a physician who worked at the Mad River Medical Center in Waitsfield, Vermont to write herself prescriptions for controlled substances.
3. The State argues that public health, safety or welfare imperatively requires emergency action, and it asks this Board to suspend summarily the Respondent's license prior to a full hearing on the merits.
4. The Board has considered the evidence related to the allegations in the State's Request for Summary Suspension.
5. The Board finds that the State has, in its presentation of evidence, met its burden to the necessary degree of showing an imperative need for emergency action to protect the public health, safety and welfare.
6. Pursuant to 3 V.S.A. § 814(c), the Board issues the following temporary order, which shall remain in effect until further action by this Board.

ORDER

The Board of Nursing GRANTS the State of Vermont's Request for Summary Suspension.

The Respondent's license is SUMMARILY SUSPENDED pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

- END -

Vermont Board of Nursing

By:

Glen W. Liff

Dated at Montpelier: 14 July 2008

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 7.14.08

APPEAL RIGHTS

This is a final administrative determination. 3 V.S.A. § 812.

A party aggrieved by a final decision of a Board may appeal the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, National Life Building, North, FL 2, Montpelier, Vermont 05620-3402 within 30 days of the entry of the order.

If a party appeals, the Director of the Office of Professional Regulation assigns the case to an appellate officer. The Appellate Officer shall decide the appeal based on the record of evidence created before the board. In cases of alleged procedural mistakes or irregularities before the board, which the record does not show, the Appellate Officer may take proof on that issue. *See* 3 V.S.A. §§ 129(d) and 130a.

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**FINDINGS OF FACT
CONCLUSIONS OF LAW & ORDER**

Background:

On Monday 10 November 2008, the Vermont Board of Nursing (Board) heard this contested case of alleged unprofessional conduct. The State of Vermont brought a Specification of Charges dated 18 July 2008 against the Respondent Patricia M. Cady. (the "Charges"). Board members Kenneth W. Bush, Ellen W. Leff, Donarae Metcalf, Sandra J. Norton, Deborah Robinson, Alan H. Weiss, DeAnn Welch and William White were present and participated in the hearing.

The Respondent appeared with counsel Robert Fairbanks. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

Summary:

This matter arises out of allegations of unprofessional conduct related to Respondent's admitted diversion of controlled substances while employed at the Mad River Medical Center in Waitsfield, Vermont. The diversion occurred over a period of years ending in 2008.

The Respondent and the State of Vermont stipulated to the facts of this case. Both parties concur that the facts substantiate a finding of unprofessional conduct.

There is no dispute between the Respondent and the State of Vermont regarding the appropriateness for Board imposed discipline for the unprofessional conduct. The parties disagree on the extent of the discipline, however.

After a review of the full evidentiary record in this matter, the Board finds that the facts demonstrate a violation of 3 V.S.A. §129a(b). The violation constitutes unprofessional conduct, the unprofessional conduct warrants discipline; and finally, the Board finds public safety requires that the discipline include a conditioned license with a suspension. Any remaining charges of unprofessional conduct, other than the charge of violating 3 V.S.A. §129a(b), are dismissed.

**Findings of Fact &
Conclusions of Law:**

1. The Respondent holds a Board issued State of Vermont registered nursing license.
2. The Board licenses the Respondent and may exercise its disciplinary authority if the Board finds that the State has proven allegations of licensee unprofessional conduct. 26 V.S.A. Chapter 28; 3 V.S.A. § 129(a); the Admin. Rules for the Bd. of Nursing and the Admin. Rules for the Office of Prof. Reg.
3. The Respondent stipulated to the factual allegations set forth in the Specification of Charges filed by the State of Vermont. The Board therefore did not need to take evidence related to the State's factual allegations.
4. In a disciplinary hearing, the state has the burden of proof. To satisfy its evidentiary burden, it must "show by a preponderance of the evidence that [a licensee] has engaged in unprofessional conduct." 3 V.S.A. § 129a(c).
5. The Respondent does not dispute the material factual allegations. The State therefore meets its statutory burden of proof. *Id.*
6. The material factual allegation is that Respondent diverted medication from her place of employment; and Respondent self-prescribed medication containing a controlled substance, hydrocodone, by using blank prescriptions taken from her employer. *See Charges at ¶¶ 4-7 (factual allegations).*
7. The State bases specific statutory charges of unprofessional conduct, pursuant to 3 V.S.A. §129a and 26 V.S.A. §1582, on the facts alleged against the Respondent. *See Charges at ¶10(a)-(e) (unprofessional conduct statutes).*
8. The issue for the Board, therefore, is whether the facts constitute a violation of the unprofessional conduct statutes governing the Respondent's license.
9. There is no dispute between the parties that the facts warrant a finding of unprofessional conduct.
10. The Board finds that the Respondent violated 3 V.S.A. §129a (b)(2) (failing to conform to essential standards of acceptable and prevailing practice may be unprofessional conduct). *Charges at ¶10(d).*
11. Both parties agreed that the theft of samples of a controlled substance, and prescription fraud in order to self-prescribe an opioid, fail to conform to essential standards of acceptable and prevailing practice.
12. The Board has no difficulty finding that this case rises to the level of unprofessional conduct and Board shall impose discipline based on a finding of violating §129a (b)(2).
13. The purpose of the hearing was to determine disposition. The Board also heard that Respondent is successfully engaged in substance abuse treatment.

14. Both sides agree that discipline is appropriate. The Respondent testified that no suspension beyond the hearing date was necessary and the State seeks a six month suspension to ensure Respondent's continued successful compliance with her substance abuse treatment plan.

15. The Board has reviewed the evidence and finds that a six month suspension retroactive to the summary suspension date is necessary to protect the public.

16. Respondent may receive a conditioned license, consistent with the terms set forth in Appendix A to this order, after completing a six month suspension. The suspension shall commence as of 14 July 2008, which is the date the Office of Professional Regulation docketed the Board's summary suspension order.

17. The Board dismisses any remaining charges other than the charge of violating 3 V.S.A. §129a(b).

ORDER

Based on the findings of fact and conclusions of law set forth above, which includes a finding of UNPROFESSIONAL CONDUCT, the Board of Nursing ORDERS the following:

The Respondent engaged in UNPROFESSIONAL CONDUCT; and

Respondent's license be SUSPENDED for a period of SIX (6) MONTHS commencing upon the date of entry of the Board's summary suspension order; and

Respondent's license be CONDITIONED for a period of THREE (3) YEARS consistent with the terms set forth in APPENDIX A to this order.

- END -

(signature page to follow)

Vermont Board of Nursing:

By: Ellen W. Leff
Ellen W. Leff, RN
Board Chairperson

Date: 2-15-09

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/20/07

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 the decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Secretary of State's Office, National Life Building, FL2, 1 National Life Drive, Montpelier, Vermont 05602-3402 within 30 days of the entry of the order.

For more information about the procedure for filing an appeal, please see the Administrative Rules for the Office of Professional Regulation, which you can find at: <http://www.vtprofessionals.org/opr1/opr/admnrule.pdf> and the Rules are also available at the Office of Professional Regulation.

If you file an appeal, the Director of the Office of Professional Regulation shall assign the case to an appellate officer. The appellate officer will review the record (the tape recording, exhibits etc.) created before the board during the hearing of your case. In cases of alleged irregularities in procedure before the board, not shown in the record, proof related to that issue may be taken by the appellate officer. 3 V.S.A. §§ 129(d) and 130a.

APPENDIX A

Consistent with the preceding order entered *In re Cady*, the following conditions (1) through (22) apply to Respondent's license.

1. Period of License Conditions.

The conditions shall remain in place until Respondent completes three (3) years of supervised nursing practice in which Respondent works forty (40) hours every two (2) weeks as a licensed registered nurse. Respondent shall receive credit for part-time work (*i.e.* work that is less than forty (40) hours every two (2) weeks) on a prorated basis. The Respondent may not work more than forty (40) hours per week.

2. Completion of Drug and Alcohol Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue drug and alcohol abuse counseling with a treating professional approved by the Board until the treating professional certifies that counseling is no longer necessary. Respondent shall comply with the substance abuse treatment plan approved by the Board and the treating professional.

3. Notification to Treating Professional.

Respondent shall provide a copy of this Order and its conditions to Respondent's substance abuse treating professional. Respondent's treating professional must confirm for the Board, in writing and on professional letterhead, receipt of this Order and the treating professional's ability to comply with the treatment related conditions all other terms of this Order.

4. Reports from Treating Professional.

Respondent shall authorize and cause Respondent's treating professional to submit evidence of satisfactory progress with the treatment plan during the effective period of this Order. The treating professional shall submit reports on forms issued by the Board. The first report is due the month after the date of commencement of the conditions. Subsequent reports are due every month thereafter.

Respondent shall authorize Respondent's treating professional to provide information requested by the Nursing Board while this Order is in effect.

5. Notification to Employers/Nursing School.

Respondent shall provide a copy of this Order to all employers in any current or future setting in which Respondent practices nursing and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Order, or with

ten (10) days of obtaining any subsequent nursing employment, Respondent shall cause Respondent's supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Order and acknowledging the ability to comply with its conditions. In the event Respondent attends a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Order and ability of the program to comply with the conditions in the Order during clinical experience.

6. Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of nursing employment and monthly thereafter, Respondent shall cause every nursing employer for which Respondent worked during that month to submit an evaluation of Respondent's work performance and number of days worked. The employer report will be on a Board issued form.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and days attended. The report will be on a Board issued form and accompanied by a cover letter on the school's letterhead.

7. Practice Supervision.

Respondent shall practice only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse who is in good standing.

8. Administration of Medications

Respondent may not administer controlled substances. The Respondent may petition to have this condition removed or modified after completing twelve (12) weeks of licensed nursing work. A petition seeking removal or modification of this condition must demonstrate to the Board, or its designee for monitoring condition compliance, that Respondent can safely administer controlled substances. Support for the petition shall include an explanation of Respondent's employer/school administrator inventory control procedures, and the Board may also require documented support for removing this condition from any applicable treating professional.

9. Interview with Board or Board Designee

Respondent shall cooperate in good faith and appear for interviews or phone calls from Board investigators or other designees.

10. Participation in Recovery Group.

Respondent shall participate in a substance abuse recovery group as recommended by Respondent's treating professional.

11. Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee pursuant to Board procedures. Testing shall be random. Urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

12. Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs, with the exception of prescribed medications, while these conditions are in place.

13. Drug Use Exception.

The Respondent may only use lawfully prescribed medications. Respondent shall inform the Board in writing of a prescribing physician, dentist, or nurse practitioner's identity within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the prescribing health care professional confirms knowledge, in writing and on appropriate letterhead, of Respondent's substance abuse history within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled medications prescribed, including the name of the prescribing health care professional, within forty-eight (48) hours of receiving the prescription medication.

The Board or its designee may request that the Respondent's health care practitioner document the continued necessity for scheduled/controlled medications prescribed for an extended term.

14. Records.

Respondent shall keep a record of all medications that the Respondent takes including over-the-counter medications, and Respondent shall produce the record upon reasonable request of the Board or its designee.

15. Types of Employment Prohibited.

Respondent shall not work in a supervisory role with the exception of supervising unlicensed assistive persons. Respondent shall not work for a nurse registry, traveling

nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a personal care provider during the effective period of this Order.

16. Out of State Practice/Residence.

Before the Board credits any out-of-state practice or residence toward fulfillment of these terms and conditions, Respondent must obtain Board approval prior to leaving the State of Vermont. If Respondent fails to receive approval, the Board will not credit time spent out-of-state toward the fulfillment of the terms and conditions of this Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Order.

17. Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Order, Respondent shall notify the Board, in writing, of Respondent's (a) current place of employment, (b) personal address, (c) email address and (d) telephone number. Respondent must notify the Board, in writing, within forty-eight (48) hours of any change in (a) employment or any change in (b-d) contact information.

18. Notification to Other States.

If the Respondent holds a nursing license from another jurisdiction(s), Respondent must inform the licensing authority of the jurisdiction(s) in which also licensed of the conditional status of Respondent's Vermont nursing license. This notice must occur within thirty (30) days of the date of entry of this Order.

19. License Renewal.

Respondent must timely apply for renewal and otherwise comply with the requirements for license renewal.

20. Release of Information Forms.

In fulfilling the conditions of this Order, the Respondent must authorize various persons identified in this order to report information or to discuss the Respondent with the Board. This includes treating professionals and employers. The Respondent must execute a consent form that allows disclosure to the Board or its designee.

21. Violation of this Order.

If the Respondent violates the terms of this Order, the Board, after giving the Respondent notice and an opportunity for a hearing, may impose additional disciplinary actions.

22. Completion of Conditional License Period.

After completing the conditional license period, the Respondent may petition the Board to remove the license conditions. The Respondent must present proof that Respondent has complied with the terms of this Order. As a requirement for reinstatement, Respondent shall demonstrate successful rehabilitation.

(- END -)