

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

IN RE: DENISE M. CARR
License No. 025-0007593

) DOCKET No. NU14-0906
)

REQUEST FOR SUMMARY SUSPENSION

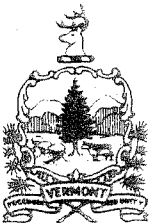
Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by Nurses pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28 and; the rules of the Board and the Vermont Office of Professional Regulation.
2. The Board of Nursing is authorized by 3 V.S.A. § 814 to summarily suspend the license of a nurse when it finds that the public health, safety or welfare imperatively requires emergency action.

Statement of Facts

3. Denise M. Carr (the "Respondent") of Stockbridge, Vermont is a licensed practical nurse holding license number 025-0007593, issued by the State of Vermont. This license was originally issued on or about October 20, 1997 and is set to expire on January 3, 2008.
4. D.B. is a 44 year old woman with ovarian cancer. D.B. has prescriptions for Oxycodone and Methadone to reduce the pain experienced as a result of the cancer. D.B.'s prescription called for the administration of six (6) Methadone tablets daily. D.B.'s daughter L.B., helps D.B. with her health issues and medication.
5. In May of 2006, R.A. a friend of D.B. died of brain cancer. D.B. became acquainted with the Respondent through R.A. since R.A. was a friend and neighbor of the Respondent. The Respondent visited D.B. at D.B.'s home in Northfield, Vermont once or twice a week from the beginning of June, 2006 through the end of August, 2006. During this time period the Respondent was the only new person regularly coming to D.B.'s residence.
5. On or about August 30, 2006, L.B. was helping allocate D.B.'s pill rations for the upcoming weeks. Based on this allocation L.B. discovered that approximately eighty (80) Methadone pills were missing.
6. On or about August 31, 2006 L.B. counted twenty-five (25) tablets of Oxycodone in D.B.'s supply. The Respondent came over on this date and went unaccompanied into the kitchen where the Oxycodone pills were kept. When the Respondent was in the kitchen, L.B. heard a pill bottle being opened. When the Respondent left the kitchen, L.B. discovered that nineteen (19) of the twenty-five (25) tablets were missing.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

7. When L.B. confronted the Respondent about the missing pills, the Respondent refused to empty her pocket. When asked what was in her hand the Respondent claimed she had two tic tacs in her hand. L.B. and D.B.'s nurse P.B. confirmed that at least one of the items in the Respondent's hand was a Oxycodone pill. When confronted the Respondent swallowed the other item that was in her hand.
8. In a sworn statement given September 6, 2006 the Respondent admitted to taking D.B.'s medication, because she had run out of her own prescription and was afraid of going through withdrawal. On or about September 19, 2006 the Respondent told Investigator Greg Kelly that she had admitted herself into Maple Leaf drug treatment facility.
9. By way of information the Respondent was sanctioned by this Board on February 10, 1998 for obtaining narcotic medications from more than one doctor and admitted she had a substance abuse problem with prescription medications.

Request for Relief

10. The facts as set out above establish that in order to protect the public health, safety or welfare of the people of the State of Vermont emergency action is imperative.
11. The above acts and circumstances, alone or in combination, violate: 3 V.S.A. § 129a(a) (3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); Vermont Board of Nursing Administrative Rules Chapter 4, Rule IV, II, C ("Any cause" includes, but is not limited to reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials). 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); and 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025-0007593 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 3rd day of October, 2006

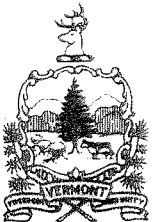
STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney

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STATE OF VERMONT



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

In re: Denise M. Carr } Docket No. NU 14-0906
License No. 025-007593 }

SUMMARY SUSPENSION ORDER

On 9 October 2006, this matter came before the Vermont State Board of Nursing, sitting at Central Vermont Hospital in Berlin, Vermont, on the State of Vermont's filing of a "Request for Summary Suspension" pursuant to 3 V.S.A. § 814(c). 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.

A suspension order by summary proceeding is a temporary order that precludes a licensed professional from using their state issued license, and engaging in the practice of their profession, pending a full evidentiary hearing on professional misconduct allegations brought by the State of Vermont. *Id.*

Findings of Fact & Conclusions of Law:

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

1. The Respondent is licensed by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129(a), and the Administrative Rules of the Office of Professional Regulation.
2. The State filed a "Request for Summary Suspension" dated 3 October 2006, alleging that Respondent intentionally interfered with the treatment and care of a patient whom she had recently befriended. Specifically, the State alleges that the Respondent stole medication needed by a 74 year-old cancer patient. The medication allegedly stolen was intended to help treat the patient's pain suffered as a result of ovarian cancer. The state also alleges the Respondent consumed the medication prescribed for the vulnerable patient's palliative care.
3. The State argues that the Respondent violated several statutes and regulations including 26 V.S.A. § 1582(a)(7) which gives this Board jurisdiction to discipline nurses who engage in conduct that is "likely to deceive, defraud or harm the public."
4. The State argues that public health, safety or welfare imperatively requires emergency action, and the state asks this Board to suspend summarily the Respondent's license prior to a full hearing on the merits.
5. The Board has considered the evidence related to the allegations in the State's Request for Summary Suspension.

6. The Board finds that the State has, in its presentation of evidence, met its burden to the necessary degree of showing the need for emergency action to protect the public health, safety and welfare.

Order:

Pursuant to 3 V.S.A. § 814(c), the Board issues the following order which shall remain in effect until further action by the Board.

The State of Vermont's Request for Summary Suspension is GRANTED.

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

Vermont Board of Nursing

By: Sinda Rice APRN Dated at: Berlin, VT Monday 9 Oct. 2006
~~Susan O. Farrell, RN~~, Chairperson

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/10/06

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, 26 Terrace Street, Montpelier, Vermont 05609-1101 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF NURSING

In re: Denise M. Carr)
License No. 025-0007593)
Docket No. NU14-0906)

STIPULATION AND CONSENT ORDER
AS MODIFIED AFTER EVIDENTIARY HEARING

STIPULATION

The following is an adaptation of the proposed stipulation and consent order offered by the Respondent and the State of Vermont. *See* Joint Exhibit I (attached for reference). After a hearing to clarify terms of the proposed consent order and to take additional evidence, the Board adopts the following stipulation and order, as amended, as its final administrative determination.

On Monday 8 January 2007, the Board heard arguments and received additional evidence in this contested case, which includes the stipulated facts set forth in this Order. Board members Kenneth W. Bush, Ellen W. Leff, Donarae Metcalf, Sandra J. Norton, Laurey M. Tyo, DeAnn Welch and Alan Weiss participated in the hearing of this matter. Board member Susan O. Farrell recused herself. The Respondent appeared with counsel Kerry DeWolf. Edward G. Adrian represented the State of Vermont. Board counsel Kevin F. Leahy presided.

Board Authority

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands, suspend, revoke, limit, 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. §1582; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Denise M. Carr (the "Respondent") of Stockbridge, Vermont is a licensed practical nurse holding license number 025-0007593, issued by the State of Vermont. This license was originally issued on or about October 20, 1997 and is set to expire on January 31, 2008.

3. D.B. is a 74 year old woman with ovarian cancer. D.B. has prescriptions for Oxycodone and Methadose to reduce the pain experienced as a result of the cancer. D.B.'s prescription called for the administration of six (6) Methadose tablets daily. D.B.'s daughter L.B., helps D.B. with her health issues and medication

4. In May of 2006, R.A., a friend of D.B., died of brain cancer. D.B. became acquainted with the Respondent through R.A. since R.A. was a friend and neighbor of the Respondent. The Respondent visited D.B. at D.B.'s home in Northfield, Vermont once or twice a week from the beginning of June, 2006 through the end of August, 2006. During this time period the Respondent was the only new person regularly coming to D.B.'s residence.

5. On or about August 30, 2006, L.B. was helping allocate D.B.'s pill rations for the upcoming weeks. Based on this allocation L.B. discovered that approximately eighty (80) Methadone pills were missing.

6. On or about August 31, 2006 L.B. counted twenty-five (25) tablets of Oxycodone in D.B.'s supply. The Respondent came over on this date and went unaccompanied into the kitchen where the Oxycodone pills were kept. When the Respondent was in the kitchen, L.B. heard a pill bottle being opened. When the Respondent left the kitchen, L.B. discovered that nineteen (19) of the twenty-five (25) tablets were missing.

7. When L.B. confronted the Respondent about the missing pills, the Respondent refused to empty her pockets. When asked what was in her hand the Respondent claimed she had two tic tacs in her hand. L.B. and D.B.'s nurse P.B. confirmed that at least one of the items in the Respondent's hand was an Oxycodone pill. When confronted, the Respondent swallowed the other item that was in her hand.

8. In a sworn statement given September 6, 2006 the Respondent admitted to taking D.B.'s medication, because she had run out of her own prescription and was afraid of going through withdrawal. On or about September 19, 2006 the Respondent told Investigator Greg Kelly that she had admitted herself into Maple Leaf drug treatment facility.

9. By way of information, the Board sanctioned the Respondent on February 10, 1998 for obtaining narcotic medications from more than one doctor and for an admitted substance abuse problem with prescription medications.

Charges:

10. The acts, omissions and/or circumstances described above constitute grounds for discipline because the Respondent has committed unprofessional conduct in violation of:

- i) 3 V.S.A. § 129a(a)(3) (failing to comply with provisions of federal or state statutes or rules governing the practice of the profession);
- ii) 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); Vermont Board of Nursing Administrative Rules Chapter 4, Rule IV, II, C ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals or any other type of materials);
- iii) 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); and
- iv) 26 V.S.A. § 1582(a)(7) (engages in conduct of a character likely to deceive, defraud or harm the public).

**Understandings made by parties and
Submitted to the Board prior to the hearing:**

The parties stipulated to the following facts, numbered 11-19, prior to the hearing. Joint Exhibit 1.

11. Respondent admits the facts above are true and that the conditions below are necessary to protect the public.
12. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
13. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
14. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
15. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
16. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and not coerced by anyone into signing this Stipulation and Consent Order.
17. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
18. Respondent agrees that the [Board may enter the following Order as modified].
19. Respondent agrees to abide by any decision of the Board in respect to the parts of the order that left open for determination at a disposition hearing.

ORDER

Based on the stipulated facts submitted by the parties, the Board ORDERS:

A. The Board of Nursing **SUSPENDS THE RESPONDENT'S LICENSE** for a minimum period of **SIX (6) MONTHS beginning effective 18 December 2006 and ending on 17 June 2007**. Before applying for reinstatement, Respondent must obtain (1) an independent evaluation by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board; and (2) the results of the treatment with the drug and alcohol abuse evaluator must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients. The Respondent's license shall not be reinstated until these prerequisites are met, regardless of whether more than six (6) months have passed since the suspension went into effect. Once reinstated, the Respondent's license will be **CONDITIONED FOR**

THREE (3) YEARS and limited pursuant to the Laws of the State of Vermont and the Rules of this Board. The conditions will be as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes three (3) years of supervised registered nursing in which she works forty (40) hours every two (2) weeks as a licensed practical nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan.

Respondent shall enter into and continue substance abuse counseling with a treating professional approved by the Board until the treating professional shall certify in writing to the Nursing Board that such counseling is no longer necessary. Respondent shall enter into and comply with the substance abuse treatment plan approved by the Board and the treating professional. The Board does not take a position on whether the Respondent's current treatment at Blackbird Addiction Services necessarily qualifies for approval under this section. Rather, the Board leaves the determination of whether Blackbird is appropriate for this particular Respondent, and in this particular case only, to the administrative personnel already designated and authorized to act on behalf of the Board in monitoring the Respondent's progress.

(4) Notification to Treating Professional.

Respondent shall provide a copy of this Stipulation and Consent Order to her treating professional and cause her treating professional to inform the Board, in writing and on professional letterhead, of receipt of the Stipulation and Consent Order and the treating professional's ability to comply with the conditions related to treatment and with all other terms of this Consent Order.

(5) Reports from Treating Professional.

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(6) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting in which Respondent practices as a licensed practical nurse and inform them of Respondent's conditional license status.

Within ten (10) days of the date of entry of this Consent Order or of any subsequent registered nursing employment, Respondent shall cause Respondent's immediate supervisor to write to the Board, on the employer's letterhead, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to write to the Board, on school letterhead, acknowledging receipt of the Stipulation and Consent Order and ability of the program to comply with the conditions in the Consent Order during clinical experience.

(7) Reports from Employers.

Within one (1) month of the date of entry of this Order or within one (1) month of the commencement of licensed practical nursing employment and **monthly** thereafter, Respondent shall cause every licensed practical nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. This report shall be submitted in writing on forms issued by the Board.

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 his performance and attendance. This report shall be submitted in writing on forms issued by the Board and accompanied by a cover letter on the school's letterhead.

(8) Practice Under Supervision.

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

(9) Participation in Recovery Groups.

Respondent shall participate as recommended by her treating professional, in Alcoholics Anonymous meetings and/or other recovery group(s).

(10) Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person, who has been approved by the Board or its designee, to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

(11) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(12) for the period described in paragraph A.(2).

(12) Drug Use Exception.

The Respondent shall not take controlled substances unless necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide

illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the establishment of the practitioner/patient relationship. Respondent shall ensure that the physician, dentist or nurse practitioner informs the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within one (1) week of entering into the practitioner/patient relationship. Respondent shall inform the Board in writing of all scheduled/controlled medications prescribed, including the name of the prescribing practitioner, within forty-eight (48) hours of receiving the prescription.

The Board or its designee may request at any time that the practitioner document the continued necessity for the prescribed scheduled/controlled medications if the term exceeds 14 days. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than 14 days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall keep a written record of all prescription medications taken and produce such record upon the request of the Board or its designee.

(13) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(14) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. 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 Consent Order.

(15) Out of State Practice/Residence.

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent leaving the State of Vermont. If Respondent fails to receive such approval before leaving the State, none of the time spent out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state practice so long as the Respondent can still comply with the provisions of this Consent Order.

(16) Notification of Place of Employment/Personal Address/Telephone Number.

Within five (5) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of her current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment, personal address, or telephone number.

(17) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont registered nursing license within thirty (30) days of the date of entry of this Order. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(18) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice as a registered nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(19) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the Office of Professional Regulation investigators and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's registered nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that her treatment provider may require her to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(20) Costs.

The Respondent shall bear all costs of complying with this Consent Order.

(21) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify

this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(22) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and she must demonstrate, to the satisfaction of the Nursing Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a licensed registered nurse.

B. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.

C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

APPROVED AND SO ORDERED:
VERMONT BOARD OF NURSING

Dated: 1/17/07

By: Laurey M. Tjo
Laurey M. Tjo
Board Secretary

Date of Entry: 1/17/07