

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

In re: MALACHI SHANE COLE	}	
License No. 026.0135894	}	Docket No. 2019-34 (RN)
	}	

SUMMARY SUSPENSION ORDER

Participating Board Members:

Deborah Swartz, RN, Acting Chair
Luana Tredwell, LPN
Douglas Sutton, RN
Kelly Sinclair, LNA
Krystal Bernier, LPN
Daniel Coane, *ad hoc* public member

Appearances:

Prosecuting the case: Aaron Kisicki, Esq.
Respondent: was not present nor represented

Presiding Officer:

George K. Belcher

Exhibits:

State Exhibit 1: Order of Summary Suspension from Georgia Board of Nursing
Dated 1/8/19 (Docket No. 2019-32)

**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 on March 11, 2019, at the Office of Professional Regulation in Montpelier, Vermont.

Findings of Fact

Based on a review of the pleadings and the file, and on the evidence presented to the Board at the hearing, the Board finds as follows:

1. Respondent is licensed as a Registered Nurse in the State of Vermont. (He was also licensed in the State of Georgia as a Registered Nurse.) The Respondent's license is set to expire on March 31, 2019. 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 public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order.
2. The prosecutor has filed a "Request for Summary Suspension." A copy of the Request is attached to this Decision and Order. The Respondent was sent a notice of the hearing on March 1, 2019 to the address on file with the Office of Professional Regulation. There was no evidence offered to show that the Respondent had, or had not, received the notice of hearing.
3. The State presented as evidence a Summary Suspension Order from the State of Georgia Board of Nursing which included administrative findings of fact. Those facts established that the Respondent carries a diagnosis of active Opiate Dependence and that he was, in December of 2018, "currently impaired and cannot fulfill his duties as a nurse until such time as he seeks additional addiction treatment, for a period of at least six months". See State Exhibit 1. That same order included findings that the Respondent had been impaired while at work in a hospital setting. The Georgia Nursing Board further found that the Respondent's continued practice as a Registered Nurse posed a threat to the public health, safety and welfare.
4. The evidence established that the Respondent violated 26 VSA Sec. 1582 (a)(3) [engaged in conduct of a character likely to deceive, defraud or harm the public]; 3 VSA Sec. 129a(a)(15) [failure to exercise independent professional judgment in performance of licensed activities]; 3 VSA Sec. 129a(a)(5) [practicing when medically or psychologically unfit to do so]; and 3 VSA Sec. 129a(b)(1) [performance of unsafe or unacceptable patient or client care]. The evidence presented show facts which imperatively require emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm, and to protect the general integrity of the medical profession.

Conclusions of Law

Our 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). Our Findings of Fact and Conclusions of Law herein are for purposes of this Order only.

The Prosecutor's Request for a Summary Suspension is supported by the evidence presented. The Board concludes that the allegations in the Request for Summary Suspension

have been established to the necessary degree. For purposes of this Summary Suspension Hearing, the Findings of Fact above do support Summary Suspension of Respondent's license. There is an imperative need to take emergency action. 3 V.S.A. § 814(c).

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. Our 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** pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

Vermont Board of Nursing

By: 
Deborah Swartz, RN, Acting Chair

Date: March 14 2019

DATE OF ENTRY: 3.19.19

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 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.