

**STATE OF VERMONT
BOARD OF NURSING**

In re: Michael L. DeMello

License No. 026.00097042

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Docket No. 2014-657 (RN)

Appearances:

Prosecutor: S. Lauren Hibbert, Esq

Respondent: Did not appear

Presiding Officer: George K. Belcher

DEFAULT ORDER

The Board of Nursing held a hearing in the above matter on May 11, 2015 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent was licensed as a Registered Nurse during the times in question as set forth in the Specification of Charges (attached). He is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1582(a), the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. His nursing license expired on March 31, 2015.
2. On February 23, 2015 the Respondent was sent a Notice of Charges in this matter by certified mail and by first class mail to his last known address. As shown by the return receipt, the Notice of Charges was received by the Respondent on March 5, 2015. OPR Rule 3.3 requires that an answer to the charges be filed within 20 days of the date on which the Notice of Charges was mailed by the Director.
3. On April 6, 2015 a notice was sent to the Respondent advising him of the hearing before the Board concerning his default and that he could appear at the hearing on May 11, 2015.
4. Respondent has not filed an answer to the charges, nor has he otherwise defended. On March 9, 2015 the Respondent sent a letter to the Vermont Nursing Board which was received and entered into evidence (State's Exhibit 1). The letter did not dispute any factual allegations. Rather, it requested that the Respondent's nursing license simply "stay expired" with no further findings of unprofessional conduct. (See Exhibit 1)
5. Upon hearing the Prosecution's presentation, and taking notice of its own file, 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's Order is based. OPR Rule 3.4, 3 V.S.A. § 809(d), and 3 V.S.A. § 814(c).

Conclusions of Law

Respondent has received adequate 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 finds, in 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.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Respondent's license is hereby **Suspended Indefinitely**, effective as of the date of the hearing. Should Respondent apply for reinstatement, the Board at that time will determine whether any conditions can permit him to resume practice while protecting public health and safety.

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.

Vermont Board of Nursing

By: 
Ellen Watson, APRN, Vice-Chair

Date: May 12, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 5/26/15

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

IN RE:)
Michael L. DeMello)
License No. 026.0097042)

Docket No. 2014-657

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Michael L. DeMello:

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. §1582; 26 V.S.A. §1584; 26 V.S.A. §1595; 26 V.S.A. §1600; 26 V.S.A. §1615 the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Michael L. DeMello (the "Respondent") of Brattleboro, Vermont is licensed by the State of Vermont under license number 026.0097042. This license was originally issued on or about September 9, 2013 and expires on or about March 31, 2015.
3. On or about September 16, 2014, Respondent voluntarily surrendered his license to practice in New Hampshire. This surrender occurred after the State of New Hampshire moved to summarily suspend his license due to a positive occupational drug test.
4. On or about February 19, 2015, Respondent voluntarily surrendered his license in the Commonwealth of Massachusetts after an investigation related to suspected diversion of hydromorphone and morphine in late 2010 and early 2011.

Charges

5. 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:

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
89 Main Street
3rd Floor
Montpelier, VT
05620-3402

- a. 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);
- b. 3 V.S.A §129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
- c. 3 V.S.A §129a(b)(2) (Failure to conform to the essential standards of acceptable and prevailing practice);
- d. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
- e. 26 V.S.A §1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);

Relief Requested

WHEREFORE, the license of Michael L. DeMello should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 20 day of February, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By: S20R
S. Lauren Hibbert
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
89 Main Street
3rd Floor
Montpelier, VT
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**STATE OF VERMONT
BOARD OF NURSING**

In re: Michael L. DeMello
License No. 026.0097042

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} Docket No. 2014-657 (RN)
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**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: S. Lauren Hibbert, Esq.

Respondent: did not appear

Presiding Officer: George K. Belcher

**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 9, 2015 in Montpelier, Vermont. Respondent did not appear. The Board has authority to summarily suspend a license pending further action, if it determines that public health, safety, or welfare imperatively requires emergency action. 3 V.S.A. § 814(c).

Findings of Fact

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

1. Respondent is a licensed registered nurse in Vermont and his license is currently set to expire on or about March 31, 2015. He is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1582(a) nurses and applicants, 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 Request alleges that the Respondent voluntarily surrendered his license in the State of New Hampshire after the State of New Hampshire moved to summarily suspend his license. Likewise, the Respondent voluntarily surrendered his license in Massachusetts after an investigation related to suspected diversion of hydromorphone and morphine in late 2010 and early 2011.

3. The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency action.
4. Notice of this hearing was sent to Respondent at his last known address via certified mail dated February 23, 2015 and received on February 25, 2015.
5. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
6. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm.

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: Jeanine Carr
Jeanine Carr, RN, Chair

Date: March 11, 2015

DATE OF ENTRY: 3/19/2015

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.

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

IN RE:)
Michael L. DeMello)
License No. 026.0097042)

Docket No. 2014-657

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; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the 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. Michael L. DeMello (the "Respondent") of Brattleboro, Vermont is licensed by the State of Vermont under license number 026.0097042. This license was originally issued on or about September 9, 2013 and expires on or about March 31, 2015.
4. On or about September 16, 2014, Respondent voluntarily surrendered his license to practice in New Hampshire. This surrender occurred after the State of New Hampshire moved to summarily suspend his license due to a positive occupational drug test.
5. On or about February 19, 2015, Respondent voluntarily surrendered his license in the Commonwealth of Massachusetts after an investigation related to suspected diversion of hydromorphone and morphine in late 2010 and early 2011.

Request for Relief

6. 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.
7. The above acts and circumstances, alone or in combination, violate:

STATE OF VERMONT



Prosecuting Attorney
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- a. 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);
- b. 3 V.S.A §129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
- c. 3 V.S.A §129a(b)(2) (Failure to conform to the essential standards of acceptable and prevailing practice);
- d. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
- e. 26 V.S.A §1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 026.0097042 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 00 day of February, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By: S. Lauren Hibbert
S. Lauren Hibbert
State Prosecuting Attorney

STATE OF VERMONT



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