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

In re: Johanna M. Donovan **Docket No. 2020-65**
License No. 026.0023562

DECISION ON REQUEST FOR SUMMARY SUSPENSION ORDER

Appearances:
Prosecuting Attorney: Elizabeth St. James, Esq.
Ellen Watson, APRN, IT member
Respondent's Attorney: P. Scott McGee, Esq.
Johanna M. Donovan personally appeared

Board of Nursing:

Jennifer Laurent, APRN, Vice-Chair
Krystal Bernier, LPN
Daniel Coane, Public Member
Virginia Hudson, RN
Kelly Sinclair, LNA
Douglas Sutton, RN
Deborah Swartz, RN
Wendy Thurston, RN
Luana Tredwell, LPN
William White, Jr., Public Member

Presiding Officer: Michael S. Kupersmith, Administrative Law Officer

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

This matter came before the Board of Nursing on the State's Request for Summary Suspension. The hearing was held on August 10, 2020, and was conducted remotely pursuant to the Emergency Rules for Remote Hearings adopted by the Office of Professional Regulation (OPR). Elizabeth St. James, Esq. represented OPR. Respondent Johanna Donovan appeared with her attorney, P. Scott McGee, Esq. The Board of Nursing has authority to summarily suspend a license pending further action if the Board determines that public health, safety or welfare imperatively requires emergency action. See 3 V.S.A. § 814(c).

Findings of Fact

After hearing, the Board finds that the following facts have been proved by a preponderance of the evidence.

1. The Respondent, Johanna Donovan, is a Registered Nurse licensed by the State of Vermont. She has been licensed since 1997. Her current license expires March 31, 2021.

2. At all times relevant, the Respondent was employed as a Registered Nurse by the University of Vermont Medical Center (UVMMC) in Burlington, Vermont.

3. Beginning in early 2018, while at work at UVMMC, Respondent diverted controlled substances for her personal use. Respondent commonly diverted oxycodone and hydromorphone, but occasionally diverted Dilaudid. Diversion continued until late February, 2020.

4. When a patient, who could receive pain medication at the nurse's discretion (PRN), made a request, Respondent would divert some of the medication for her personal use. She would withdraw more medication than the patient requested, would administer the requested amount, and would use the balance herself.

5. When Respondent began to divert medication, she did so only occasionally. Over time, diversion increased to once every work shift, and then to several times per shift. Respondent generally worked three 12 - hour shifts per week.

6. During the time Respondent diverted medication, she also used prescribed Vicodin for pain. She usually took four to six pills per day and was allowed up to six pills per day as per her prescription.

7. Respondent testified that she began taking prescribed pain medication in 2011 or 2012 after she had been assaulted and injured by a patient at work. This was the first time she had been prescribed pain medication except for a broken hand in 2002. She also testified about a second assault by a patient in 2017 which exacerbated her previous injury and which caused a new injury which also resulted in chronic pain. She testified that she received a permanent, partial disability rating for each assaultive injury.

8. Respondent voluntarily left employment with UVMMC in early March, 2020 after being confronted with discrepancies in narcotic administration. She later was employed by Bayada Home Health, but resigned that position in early July. She testified that her duties at Bayada did not include dispensing controlled substances. (Upon questioning, she acknowledged that home health nurses often have access to patients' controlled drugs.) Respondent has not worked as a nurse since leaving Bayada. She testified that she will not seek or accept work as a nurse until the Board issues a final order in this matter.

9. OPR Investigator Michael Warren interviewed Respondent on July 1, 2020. Respondent admitted that she had been diverting controlled substances for her personal use for about two years while employed at UVMMC. Investigator Warren testified that the Respondent was cooperative with him and that he thought she was candid about her diversion of drugs.

10. Respondent told Investigator Warren that she had stopped using prescribed pain medications in early May, 2020, and had not used any controlled pain medications since that time.

11. Respondent has been in therapy with a non-licensed, non-registered therapist, who is not a licensed alcohol and substance-abuse counselor. Respondent believes that she does not need substance-abuse treatment at this time.

Conclusions of Law

The Findings of Fact and Conclusions of Law in this Summary Suspension Order are for purposes of deciding whether ***at this time*** there is an imperative need to take emergency action. 3 V.S.A. § 814(c). The Findings of Fact and Conclusions of Law herein are for purposes of this Order only.

In its Request for Summary Suspension, the State alleged four violations of Vermont Law which justify immediate suspension of Respondent's license: (1) Diverting or attempting to divert drugs for unauthorized use (26 VSA 1582(a)(2); (2) Engaging in conduct of a character likely to deceive, defraud or harm the public (26 VSA 1582(a)(3); (3) 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 (3 VSA 128a(a)(15); and (4) Failure to practice competently by reason of any cause on single or on multiple occasions . . .. 3 VSA 129a(b)(1).

The Board concludes that the facts proved by the State provide a sufficient basis to support all four allegations.

1. The Respondent diverted controlled substances for unauthorized use on multiple occasions.

2. Diversion of drugs deceived and defrauded Respondent's employer.

3. Respondent failed to exercise responsible, independent, professional judgment each time she diverted controlled substances.

4. Diversion of controlled substances constitutes failure to practice nursing competently. A nurse who abuses controlled substances may become impaired and may cause harm to patients in her care if impaired.

The Respondent did not dispute the evidence of diversion of controlled substances presented by of the State. She candidly admitted diversion of drugs both when interviewed by Investigator Warren and when testifying at hearing. Respondent disputes only the State's request for summary suspension. Respondent contends that summary suspension is not necessary at this time because (1) she does not intend to practice nursing at least until the anticipated misconduct charges are finally resolved by the Board; and (2) Respondent will voluntarily surrender her nursing license until that time.

The Board considered the Respondent's proposed interim resolution and decided to reject it for the following reasons. First, the Board concluded that it could not require the Respondent to surrender her license. If it accepted Respondent's offer today, she could change her mind tomorrow.[1] Second, and more importantly, the Board concluded that even a surrender of the Respondent's Vermont license would not necessarily prevent Respondent from seeking a nursing license in another jurisdiction.[2] Surrender of her license would not alert any person or entity who examines Respondent's license status that there is a pending issue regarding Respondent's diversion of medication or her history of substance abuse.

The Board concludes that public health, safety, and welfare imperatively require the summary suspension of Respondent's license. The Board concludes that summary suspension is imperatively required because suspension is the only way the Board can insure the protection of the public.

The dangers to public health, safety, and welfare are manifest. The Board does not doubt the Respondent's good intentions, but the Board, individually and collectively, has considerable experience in dealing with nurses with substance use disorders. The Respondent testified that she believes that she does not need substance-abuse treatment at this time; that she has successfully abstained from use of controlled substances, both prescribed and non-prescribed, for almost three months. But Respondent diverted drugs for almost two years and she used prescribed, controlled drugs for six or seven years prior to that. The Board is aware that substance use disorder is a chronic and relapsing condition, even for those who have abstained for years. Relapse is not uncommon, particularly without adequate treatment.

If the Respondent were able to obtain employment as a nurse, whether in Vermont or elsewhere, the risk to public health, safety and welfare is self-evident. Although Respondent testified that she never deprived a patient of needed medication, she might find herself in a situation where her craving for drugs may cause her to do so. As well, Respondent's unsupervised use of controlled substances might result in mental or physical impairment to the detriment of her patients.[3]

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[1] The Board recognizes that this objection could be cured by accepting the surrender before it issued its order.
[2] There have been previous cases where a Respondent was permitted to surrender a Vermont license but was nevertheless able to become licensed in another jurisdiction.
[3] The Board acknowledges that there was no evidence or suggestion that Respondent's drug diversion impacted her ability to provide appropriate patient care.

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. The Findings and Conclusions in the summary suspension phase 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 State's Request for Summary Suspension is **Granted.** Respondent's license is hereby summarily suspended pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

It is SO ORDERED this 10th day of August, 2020

Jennifer Laurent

Digitally signed by Jennifer Laurent
Date: 2020.08.13 10:44:41 -04'00'

Board of Nursing
By: Jennifer Laurent, Vice-Chair

Date of Entry: August _13, 2020