

STATE OF VERMONT
BOARD OF NURSING

IN RE:)
Donald Dufoe) Case File No. NU81-0601
License No. 26-24029)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Introduction

The Vermont Board of Nursing ("the Board") held a hearing in this case on Monday, July 8, 2002 at 81 River Street in Montpelier, Vermont. Board members Larry Kingsbury, Alan Weiss, Sandra Norton, Pat Rock, Susan Farrell, De-Ann Welch, Linda Rice and Susan Cota participated in the decision. George Haegele, Assistant Attorney General, appeared for the State. Donald Dufoe ("the Respondent") was not present. Chris Winters was the Presiding Officer.

The Respondent did file an answer in this case, stating, "I do not dispute any of the facts."

Findings of Fact

Because the Respondent does not dispute any of the State's charges in his answer, the State's facts as set forth in the Specification of Charges dated February 15, 2002 are attached and incorporated by reference as the facts on which the Board's Order is based.

Conclusions of Law

- A. Pursuant to 26 V.S.A. § 1598 and 3 V.S.A. § 129, The Board of Nursing may revoke, suspend, discipline or otherwise condition the license of a nurse who engages in unprofessional conduct as defined by 26 V.S.A. § 1582 and 3 V.S.A. § 129a.
- B. The Respondent committed unprofessional conduct by using drugs (Percocet) while on duty and also using drugs (Demerol and Dilaudid) while off duty in violation of 26 V.S.A. § 1582(a)(3) and Board Administrative Rules Chapter 4, Rule IV(B)(2) and (3) evidencing an inability to practice nursing competently.
- C. The Respondent committed unprofessional conduct by diverting drugs for personal use which is conduct likely to deceive defraud or harm the public and

is a violation of 26 V.S.A. § 1582(a)(7) and Board Administrative Rule IV(B)(4)(d) evidencing an inability to practice nursing competently.

- D. The Respondent committed unprofessional conduct by being addicted to the use of habit-forming drugs in violation of 26 V.S.A. § 1582(a)(5).
- E. The Respondent committed unprofessional conduct by being convicted of a crime related to the practice of the profession in violation of 26 V.S.A. § 1582(a)(2) and 3 V.S.A. § 129a(a)(9).

Order

In light of the above findings and conclusions, the Board hereby
INDEFINITELY SUSPENDS the Respondent's license, effective as of the date of the hearing.

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By: Susan Farrell
Susan Farrell, RN
Chair

Date: July 15, 2002

OFFICE OF PROFESSIONAL REGULATION

Date of entry: 7/25/02

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

IN RE:

DONALD DUFOE, R.N.
License No. 026-0024029

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Docket No: NU 81-0601

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Donald Dufoe:

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)(5); 3 V.S.A. §814(d); 26 V.S.A. §1582(a).
2. The use of drugs, narcotics, chemicals or any other type of materials constitute a reason that a nurse is unable to practice nursing competently and is a basis on which the Board can impose disciplinary action. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(3); 26 V.S.A. §1582(a)(3).
3. Diverting supplies, equipment, or drugs for personal or other unauthorized use is conduct likely to deceive, defraud or harm the public and is a basis on which the Board can impose disciplinary action. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(4)(d); 26 V.S.A. §1582(a)(7).
4. Being addicted to the use of habit-forming drugs is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(5).
5. Whether or not committed in this state, being convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(2).

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Facts

6. The Respondent is licensed as a Registered Nurse under License Number 026-0024029.

7. Respondent's license was originally issued on June 4, 1998 and it currently expires on March 31, 2003.
8. At all times relevant, the Respondent worked at the Central Vermont Hospital in Berlin, Vermont.
9. While employed at the Central Vermont Hospital, Respondent, over the past six months and per day:
 - a) Diverted, for personal use, twelve (12) Percocet tablets per twelve (12) hour shift which was ingested at work;
 - b) Diverted, for personal use, Demerol and Dilaudid which was ingested at home following work;
 - c) Removed narcotic medications from the Pyxis machine without a doctor's order;
 - d) Failed to administer to the patient(s) those medications mentioned in subsection (c) above;
 - e) Withdrew, from the Pyxis machine, narcotic medications after patient(s) had been discharged; and
 - f) Withdrew, from the Pyxis machine, narcotic medications for patient(s) that were not assigned to him.
10. On or about June 1, 2001, two investigators from the Office of Professional Regulation contacted the Respondent to discuss a complaint of unprofessional conduct.
11. Respondent admitted to the investigators that Respondent had diverted, for personal use, twelve (12) Percocet tablets per twelve (12) hour shift which was ingested at work, Demerol and Dilaudid which was ingested via injection at home following work.
12. Respondent admitted to the investigators that Respondent had diverted the suspect narcotic medications for a period of approximately six (6) months.
13. Respondent admitted to the investigators that Respondent is currently addicted to narcotic(s) and/or other drugs.
14. Empty vials of Demerol and Dilaudid were found at Respondent's home.
15. Respondent admitted to the investigators that Respondent diverted these vials from the Central Vermont Hospital.
16. Upon information and belief, Respondent was admitted to the Brattleboro Retreat on June 7, 2001.

17. By way of history, Respondent's license was summarily suspended by the Board for the above conduct on June 11, 2001.
18. Around November 2001, Respondent received a misdemeanor conviction for the above. (State v. Dufoe, 831-07-01 WnCr)(attached and incorporated).

Claims

- A. The use of drugs, narcotics, chemicals or any other type of materials constitute a reason that a nurse is unable to practice nursing competently and is a basis on which the Board can impose disciplinary action. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(3); 26 V.S.A. §1582(a)(3).
- B. Diverting supplies, equipment, or drugs for personal or other unauthorized use is conduct likely to deceive, defraud or harm the public and is a basis on which the Board can impose disciplinary action. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(4)(d); 26 V.S.A. §1582(a)(7).
- C. Being addicted to the use of habit-forming drugs is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(5).
- D. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 3 V.S.A. §129a(a)(3).
- E. Whether or not committed in this state, being convicted of a crime related to the practice of nursing or a felony which evinces an unfitness to practice nursing is unprofessional conduct and is a basis on which the Board can impose disciplinary action. 26 V.S.A. §1582(a)(2).

Relief Requested

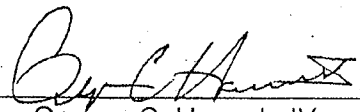
WHEREFORE, the license of Donald Dufoe should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

Dated at Montpelier, Vermont this 15th day of February 2002.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



George C. Haegle IV
Assistant Attorney General

Office of the
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109 State Street
Montpelier, VT
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6-13-01

STATE OF VERMONT
BOARD OF NURSING

pk June

In re: Donald Dufoe
License No. 26-24029

Docket No. NU81-0601

SUMMARY SUSPENSION ORDER

On June 11, 2001, this case came before the Board of Nursing for a hearing on the State's request for summary suspension.

Based upon the evidence presented by the parties, the Board finds that the allegations in the request for summary suspension have been established to the necessary degree. Therefore, the Board finds that the public health, safety, or welfare imperatively require emergency action against the Respondent's license.

Pursuant to 3 V.S.A. § 814(c), Respondent Donald Dufoe's nursing license is SUMMARILY SUSPENDED until a hearing on charges has been held and determined, or other resolution of this case.

BOARD OF NURSING

By: Susan Farrell
Susan Farrell
Chair

Dated: June 11, 2001

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 6-13-01

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

IN RE:
DONALD DUFOE, R.N.
License No. 026-0024029

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Docket No: NU 81-0601

REQUEST FOR SUMMARY SUSPENSION

NOW COMES the State of Vermont and requests the summary suspension of the registered nursing license of the Respondent, Donald Dufoe, on the basis of the following:

Board Authority

1. The Vermont State Board of Nursing ["the Board"] has authority to summarily suspend licenses in cases requiring emergency action. 3 V.S.A. §129(a)(5).
2. The Board may order summary suspension, pending proceedings for revocation or other action, if the Board finds that public health, safety, or welfare imperatively requires emergency action, and if the Board incorporates a finding to that effect in its order. 3 V.S.A. §814(c).
3. The use of drugs, narcotics, chemicals or any other type of materials constitute a reason that a nurse is unable to practice nursing competently and is a basis on which the Board can impose disciplinary action, including a summary suspension. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(3); 26 V.S.A. §1582(a)(3).
4. Diverting supplies, equipment, or drugs for personal or other unauthorized use is conduct likely to deceive, defraud or harm the public and is a basis on which the Board can impose disciplinary action, including a summary suspension. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(4)(d); 26 V.S.A. §1582(a)(7).
5. Being addicted to the use of habit-forming drugs is unprofessional conduct and is a basis on which the Board can impose disciplinary action, including a summary suspension. 26 V.S.A. §1582(a)(5).
6. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is a basis on which the Board can impose disciplinary action, including a summary suspension. 3 V.S.A. §129a(a)(3).

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Facts

7. The Respondent (whose address is listed in the database of the Office of Professional Regulation as Vermont 05641) is licensed as a Registered Nurse under License Number 026-0024029.
8. Respondent's license was originally issued on June 4, 1998 and it currently expires on March 31, 2003.
9. At all times relevant, the Respondent worked at the Central Vermont Hospital in Berlin, Vermont.
10. While employed at the Central Vermont Hospital, Respondent, over the past six months and per day:
 - a) Diverted, for personal use, twelve (12) Percocet tablets per twelve (12) hour shift which was ingested at work;
 - b) Diverted, for personal use, Demerol and Dilaudid which was ingested at home following work;
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15. Empty vials of Demerol and Dilaudid were found at Respondent's home.
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Claims

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- B. Diverting supplies, equipment, or drugs for personal or other unauthorized use is conduct likely to deceive, defraud or harm the public and is a basis on which the Board can impose disciplinary action, including a summary suspension. Board of Nursing Administrative Rules ["BNAR"] Chapter 4, Rule IV (B)(4)(d); 26 V.S.A. §1582(a)(7).
- C. Being addicted to the use of habit-forming drugs is unprofessional conduct and is a basis on which the Board can impose disciplinary action, including a summary suspension. 26 V.S.A. §1582(a)(5).
- D. Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession is a basis on which the Board can impose disciplinary action, including a summary suspension. 3 V.S.A. §129a(a)(3).

Relief Requested

Wherefore, the State of Vermont requests that:

E. Findings be made :

- (1) That the Respondent has diverted medications for personal use;
- (2) That the Respondent is currently addicted to the use of habit forming drugs;
- (3) That Respondent's use of drugs, narcotics, chemicals or any other type of materials constitute a reason that a he is unable to practice nursing competently; and

(4) That the public health, safety, or welfare imperatively requires emergency action.

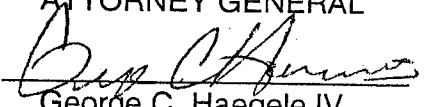
F. The Respondent's license, number 026-0024029 should be **SUMMARILY SUSPENDED** until unprofessional conduct charges are filed and there is a final determination on any needed disciplinary action.

Dated at Montpelier, Vermont this 7th day of June 2001.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:


George C. Haegele IV
Assistant Attorney General

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