

**STATE OF VERMONT
BOARD OF NURSING**

In re: James H. Duguay	}	
License No. 025.0008879	}	Docket No. 2014-655 (LPN)
	}	

Appearances:

Prosecutor: Elizabeth A. Jarvis

Respondent: Did not appear

Presiding Officer: George K. Belcher

DEFAULT ORDER

The Board of Nursing held a hearing on the above matter on April 13, 2015 at the Montpelier Room at the Capital Plaza in Montpelier, Vermont. Respondent did not attend and was not represented by counsel.

Findings of Fact

1. Respondent is licensed as a licensed practical nurse and 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.
2. On January 30, 2015 Respondent was sent a Notice of Charges in this matter by certified mail and first class mail to his last known address. A copy of the Specification of Charges is attached to this Default Order.
3. OPR Rule 3.3 requires that an Answer be filed within 20 days of the date on which the notice of charges was mailed by the Director.
4. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14).
5. Return receipt stamps on the envelope indicate the notice of charges was delivered on February 11, 2015.
6. Respondent has not filed an answer to the charges.
7. On March 5, 2015 notice of the Default Hearing scheduled for this date was mailed to Respondent at that same address by certified mail and first class mail. The file shows receipt of this mailing on March 14, 2015.
8. Respondent has still not answered the charges nor has he otherwise appeared or defended.
9. 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 or constructive 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.

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

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: April 15, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/15/15

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

IN RE:	)	
JAMES DUGUAY	)	Docket No. 2014-655
License No. 025.0008879	)	

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Annika Green, and makes the following Charges against the Respondent, James Duguay:

Board Authority

1. The Vermont State Board of Nursing ("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. § 1595; the Administrative Rules of the Board of Nursing ("ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. James Duguay ("Respondent") of Colebrook, New Hampshire is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008879. This active license is currently set to expire on or about January 31, 2016.
3. At all times relevant, Respondent was employed at Rowan Court Nursing Home ("Rowan Court") in Barre, Vermont.
4. On or about October 6, 2014, staff at Rowan Court discovered that Respondent had given patient H.L. two Haldol tablets, yet documented that he had given her Diazepam and Dilaudid.
5. H.L. had suspected the pills given to her were incorrect so she did not ingest them, but saved them in a napkin and gave them to the nurse on the next shift. That nurse identified the pills to be Haloperidol (Haldol), an anti-psychotic medication. H.L. did not have a physician's order for Haldol.
6. On or about October 28, 2014, Office of Professional Regulation Investigator Dennis Menard interviewed Respondent.

STATE OF VERMONT



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

- a) Initially, Respondent stated it was an accident that he had given patient H.L. Haldol tablets instead of the Diazepam and Dilaudid.
- b) Later in the interview, Respondent admitted to diverting Dilaudid and Diazepam "maybe six" times.
- c) Respondent stated he was prescribed Ativan by his physician, but that he ended up overusing it and "self medicating."
- d) Respondent stated he could purchase the drugs on the street but the weekend in question, (10/4/14-10/5/14) he had run out of his medication and felt he was out of options, stating "I felt out of control and I felt helpless and scared."
- e) When asked the method Respondent used for diverting narcotics from H.L., Respondent stated, "I would sign out a PRN [as needed medication] and give her nothing, she didn't ask for anything, so there was an intricate thing like that." He stated he had signed "as needed" medications out of the narcotic log, documented that they were administered to H.L. and then "gave them to myself."

Charges

7. The above acts and circumstances, alone or in combination, violate:
- a) 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);
 - b) 3 V.S.A. § 129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

Relief Requested

WHEREFORE, the license of James Duguay should be revoked or otherwise disciplined.

DATED at Montpelier, Vermont this 29th day of January, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Annika Green

State Prosecuting Attorney

STATE OF VERMONT



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

**STATE OF VERMONT
BOARD OF NURSING**

In re: James H. Duguay
License No. 025-8879

}
} Docket No: 2014-655(LPN)
}

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: Annika Green
Respondent: did not appear

Presiding Officer: Larry S. Novins

**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 February 9, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. Mr. Duguay 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. Mr. Duguay is a licensed practical nurse and 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. 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 in October, 2014 Mr. Duguay was diverting Dilaudid and Diazepam, documenting that they were for patients, but taking them himself. On one occasion Mr. Duguay gave a patient a different drug which had not been prescribed for that patient.
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 Mr. Duguay at his last known address via certified mail dated January 30, 2015.
 5. The Board finds for purposes of this hearing that Mr. Duguay did divert drugs for his own use and did document that they were given to patients. Mr. Duguay on one occasion gave patients drugs not prescribed to them to cover up his diversion.
 6. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
 7. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm. If summary suspension is not ordered, the Board believes that patient harm and practice under the influence of drugs will occur.

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 Mr. Duguay'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 Mr. Duguay 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 Mr. Duguay 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**. Mr. Duguay'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).

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

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: February 9, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/10/15

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

IN RE:

JAMES DUGUAY

License No. 025.0008879

)
)
)

Docket No. 2014-655

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. James Duguay ("Respondent") of Colebrook, New Hampshire is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008879. This active license is currently set to expire on or about January 31, 2016.
4. At all times relevant, Respondent was employed at Rowan Court Nursing Home ("Rowan Court") in Barre, Vermont.
5. On or about October 6, 2014, staff at Rowan Court discovered that Respondent had given patient H.L. two Haldol tablets, yet documented that he had given her Diazepam and Dilaudid.
6. H.L. had suspected the pills given to her were incorrect so she did not ingest them, but saved them in a napkin and gave them to the nurse on the next shift. That nurse identified the pills to be Haloperidol (Haldol), an anti-psychotic medication. H.L. did not have a physician's order for Haldol.
7. On or about October 28, 2014, Office of Professional Regulation Investigator Dennis Menard interviewed Respondent.
 - a. Initially, Respondent stated it was an accident that he had given patient H.L. Haldol tablets instead of the Diazepam and Dilaudid.

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- b. Later in the interview, Respondent admitted to diverting Dilaudid and Diazepam "maybe six" times.
- c. Respondent stated he was prescribed Ativan by his physician, but that he ended up overusing it and "self medicating."
- d. Respondent stated he could purchase the drugs on the street but the weekend in question, (10/4/14-10/5/14) he had run out of his medication and felt he was out of options, stating "I felt out of control and I felt helpless and scared."
- e. When asked the method Respondent used for diverting narcotics from H.L., Respondent stated, "I would sign out a PRN [as needed medication] and give her nothing, she didn't ask for anything, so there was an intricate thing like that." He stated he had signed "as needed" medications out of the narcotic log, documented that they were administered to H.L. and then "gave them to myself."

Request for Relief

- 8. 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.
- 9. The above acts and circumstances, alone or in combination, violate:
 - a. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);
 - b. 3 V.S.A. § 129a(b)(1) and (2) (Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0008879 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 29th day of January, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Annika Green
Annika Green
State Prosecuting Attorney

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