

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

IN RE:
ANN MARIE GALLAGHER
License No. 026.0042531

Docket No. 2010-427

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Ann Marie Gallagher, RN, who stipulate and agree as follows:

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; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Ann Marie Gallagher (the "Respondent") of Rutland, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0042531. This license was originally issued on or about June 19, 2008 and is currently set to expire on or about March 31, 2011. Respondent has also been licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0006095. Respondent's LPN license was originally issued on or about January 20, 1987 and expired on or about January 31, 1998.
3. At all times relevant, Respondent was employed as a Registered Nurse at Mountain View Center (the "Facility"), located in Rutland, Vermont.
4. On or about July 27, 2010 in a Drug Diversion Reporting Form, Facility Administrator J.M. advised that the Facility suspected Respondent had been diverting narcotics from the Facility during a period of time beginning in or around April 2010. J.M. reported that Respondent had documented many times in medical records that she had popped (removed from packaging) pills in error; that Respondent documented she administered narcotics more frequently than other nurses, and in excess of physicians' orders; that new pages in the narcotic book started with

discrepancies between pages; and that an alert and oriented patient denied to the Director of Nursing that she had received pain medication that the Respondent documented she administered to this patient. J.M. advised Respondent was suspended from the Facility on or about July 26, 2010.

5. On or about July 28, 2010, during an interview with Investigator Jamie Palmisano M.H., who was the Director of Nursing, stated that the Respondent documented approximately twenty (20) medication errors between March 11, 2010 and July 21, 2010 that were related to Oxycodone.
6. On or about July 28, 2010, M.H. stated to Investigator Palmisano that on or about July 26, 2010 at 7:00 am Respondent documented giving patient M.B. 5mg IR Oxycodone; however, when M.H. questioned M.B. she denied ever receiving the medication. M.H. described M.B. as being alert and oriented.
7. On or about August 9, 2010, during an interview with Investigator Palmisano, J.S. RN stated that he sent an email to M.H. regarding his observations of the Narcotic Book and medication administrations of Ann Gallagher. J.S. stated that he noticed the Respondent consistently administered medications such as Oxycodone to patients who were not typically in need of those medications. Additionally it appeared to J.S. that the Respondent's administration of Oxycodone was higher than that of other medication nurses. J.S. stated he suspected that the Respondent was diverting drugs although he had never observed her take any drugs.
8. Respondent has a pending case in Rutland District Court for the charge of Fraud or Deceit.

Charges

9. 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:
 - a. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
 - b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(3); and diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(4);
 - c. 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); and

- d. 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).

Understandings

7. This Stipulation is neither an admission of liability by the Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and expense of protracted litigation of the charges above, the Parties reach a full and final Stipulation pursuant to these Understandings and the Order below. The Respondent does not dispute that the State could prove these charges by a preponderance of the evidence if this matter went to a hearing and agrees that the conditions below are necessary to protect the public.
10. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
11. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
12. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
13. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
14. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
15. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
16. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. The Board of Nursing hereby **INDEFINITELY SUSPENDS** the Respondent's license to practice nursing from the date of entry below. Within forty-five (45) days of

requesting reinstatement, Respondent must: 1) obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board and who has verified receipt of this Order, the results of which must indicate that the Respondent does not present a risk to the safety, health or welfare of her potential patients; 2) submit to the Board the results of a minimum of six (6) random urine analyses, collected in an observed setting; administered by a person or entity that has been pre-approved by the Board; and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board, the results of which shall be negative; failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed positive; 3) enter into a treating professional agreement with a treating professional pre-approved by the Board; and 4) enter into a substance abuse treatment plan approved by the Board with the pre-approved treating professional. The Respondent's license shall not be reinstated until these prerequisites are met. Once reinstated, Respondent's license will be **CONDITIONED FOR A MINIMUM OF THREE (3) YEARS** commencing with the date of reinstatement. The conditions will be as follows:

(1) Re-issue of License.

Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."

(2) Length of Time of Conditions Imposed.

The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes a **minimum of three (3) years** of supervised nursing in which she works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of less than forty (40) hours every two (2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

(3) Completion of Substance Abuse Counseling and Treatment Plan.

If recommended by the Board approved Independent Evaluator, the Respondent shall enter into and continue substance abuse counseling with the treating professional pre-approved by the Board until the treating professional shall certify in writing to the Board that such counseling is no longer necessary. Respondent shall comply with the substance abuse treatment plan approved by the Board and the treating professional.

(4) Reports from Treating Professional.

Respondent shall authorize and cause her treating professional to submit to the Board evidence of satisfactory progress with the treatment plan during the effective period of this Consent Order. These reports shall be submitted in writing on forms issued by the Board. The first report is due commencing the month after the date of the commencement of the conditions and subsequent reports are due **monthly** thereafter.

Respondent shall authorize her treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

(5) Participation in Recovery Group(s).

Respondent shall participate as recommended by her treating professional in substance abuse recovery group(s), and shall submit quarterly reports documenting such attendance on forms issued by the Board.

(6) Random Drug and Alcohol Testing.

Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person or entity that has been pre-approved by the Board or its designee to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall cause that screen to be presumed positive. Any positive screen shall act as a violation of this Order.

(7) Abstain from Drug and Alcohol Use.

Respondent shall abstain completely from the consumption or possession of alcohol and drugs with the exception of medications as outlined in paragraph A.(8) for the period of time described in A.(2).

(8) Drug Use Exception.

Respondent shall not take controlled substances unless medically necessary. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a physician, dentist, or nurse practitioner whose identity shall be made known to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent shall cause the physician, dentist or nurse practitioner to inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Moreover, the Respondent shall cause this prescribing practitioner to inform the Board, in writing and on appropriate letterhead, of all scheduled/controlled medications prescribed – and the anticipation of how long such prescriptions will need to be taken – within seven (7) days of the prescription.

The Board or its designee may request at any time that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. This includes medications to be administered as necessary. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall provide the Board with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Board within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications.

(9) Notification to Employers/Nursing School.

Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status.

Within ten (10) days of the date of entry of this Consent Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event the Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

(10) Reports from Employers/Program Director.

Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer the Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

In the event the Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of her performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All nursing program reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.

(11) Practice Under Supervision.

Respondent shall practice as a nurse only in a setting where Respondent has direct supervision for the entire shift by a licensed registered nurse that is in good standing with the Board.

(12) Administration of Medications.

Respondent is prohibited from administering any controlled substances. This condition may be removed only by the Respondent filing a petition with the Board after she has worked as a nurse for six (6) months for at least forty (40) hours every two weeks (or the part time equivalent) after the date of reinstatement.

In any such petition, the Respondent must demonstrate, to the satisfaction of the Nursing Board or its designee, that she can safely and competently administer such medications. In any such petition, the Respondent must include appropriate support from her treating professional and employer or nursing school administrator and a description of the documentation and inventory control procedures in place.

The removal of this prohibition shall not automatically result in the reinstatement of all medication privileges. The Board may gradually restore those privileges through whatever intermediary steps it determines are appropriate.

(13) Types of Employment Prohibited.

Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency or as a private duty nurse or personal care provider requiring a nursing or nursing assistant license during the effective period of this Consent Order.

(14) Interview with the Board or its Designee.

Respondent shall appear in person for interviews with the Board or its designee upon request.

(15) Out-of-State Practice.

Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board prior to Respondent practicing nursing outside the State of Vermont. If Respondent fails to receive such approval before practicing nursing outside the State of Vermont, none of the time spent practicing nursing out-of-state will be credited toward the fulfillment of the terms and conditions of this Consent Order. The Board will approve out-of-state nursing practice so long as the Respondent can still comply with the provisions of this Consent Order.

If the Respondent receives discipline on a nursing license held in another state during the conditioned period, the Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

(16) Notification of Place of Employment/Personal Address/Telephone Number.

Within ten (10) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of her current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment, personal address, or telephone number.

(17) Notification to Other States.

In the event that the Respondent is licensed in nursing in any other state(s), she must inform the nursing licensing board of the state(s) in which the Respondent is licensed of the conditional status of her Vermont nursing license within thirty (30) days of the date of entry of this Order. If the Respondent fails to provide such notification, it will be considered a violation of this Order.

(18) License Renewal.

If the Respondent's license expires while this Order is still in effect, this Order does not automatically extend the license. In that situation, in order to continue to practice as a nurse, the Respondent must timely apply for renewal, pay the applicable fee and demonstrate that she has otherwise complied with the requirements for license renewal.

(19) Release of Information Forms.

The conditions of this Order require the Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss the Respondent and any and all treatment rendered to the Respondent for drugs and/or alcohol with the Board or its designee. The conditions of this Order must allow any and all information from the Respondent's treatment providers to also be provided to the Office of Professional Regulation investigators and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

The Respondent is entitled to revoke this consent at any time. However, any revocation by the Respondent of such consent to disclosure during the term of this Order shall be considered a violation of this Order.

This consent expires when the conditions are removed from the Respondent's nursing license.

This Stipulation and Consent Order shall constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31.

The Respondent understands that her treatment provider may require her to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

(20) Costs.

The Respondent shall bear all costs of complying with this Consent Order.

(21) Violation of this Order.

If the Respondent violates the terms of this Order in any respect, the Board, after giving the Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against the Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.

(22) Completion of Conditional License Period.

After the conditional license period, the Respondent may petition the Board to remove any and all conditions on her license. The Respondent must present proof that she has fully complied with the terms of this Order. The Respondent must also present proof of successful substance abuse rehabilitation and she must demonstrate, to the satisfaction of the Board, that she poses no danger to the public or the practice of nursing and that she can safely and competently perform the duties of a licensed nurse.

- B. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- C. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).
- D. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

Dated: 5/5/11

Dated: 5/5/11

APPROVED AND SO ORDERED:

Dated: 5-9-11

Date of Entry: 5/10/11
nu.gallagher.stip2

STATE OF VERMONT
SECRETARY OF STATE

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

ANN MARIE GALLAGHER
RESPONDENT

By: Ann Marie Gallagher
Ann Marie Gallagher

VERMONT BOARD OF NURSING

By: Ellen Ruff
Chairperson

**STATE OF VERMONT
BOARD OF NURSING**

In re: Ann Marie Gallagher
License No. 026-42531

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Docket No. 2010-427 (RN)

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

for Petitioner, State of Vermont: Betsy Ann Wrask
for Respondent: Did not appear

Presiding Officer: Larry S. Novins

**Summary Suspension Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On August 9, 2010 this matter came before the Board of Nursing on the State's Request for a Summary Suspension pursuant to 3 V.S.A. § 814(c). Ms. Gallagher 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.

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. Ms. Gallagher is licensed as a Registered Nurse by and subject to the disciplinary authority of this Board. 26 V.S.A. Chapter 28, 3 V.S.A. § 129, the Administrative 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 State has filed a "Request for Summary Suspension." A copy of the Request is attached to this Decision and Order. The Request alleges that Ms. Gallagher diverting narcotic drugs and falsifying patient records to cover her substance abuse.
3. The State further alleges that the public health, safety or welfare imperatively requires emergency action.
4. Notice of this hearing was sent to Ms. Gallagher at her last known address via certified mail dated August 4, 2010. Ms. Gallagher had actual notice that the Board would consider this matter today.

5. The Board has reviewed the evidence presented by the State.
6. The Board finds for purposes of this hearing that Ms. Gallagher has diverted drugs and falsified patient records to hide her substance abuse.
7. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
8. The evidence presented does imperatively require emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent Ms. Gallagher continuing to work in a position where she can divert patient drugs and cause patient harm from incorrect medical records and inaccurate medication regarding pain medication. If summary suspension is not ordered, the Board finds that patient harm is inevitable.

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 and Conclusions herein are for purposes of this Order only.

The State'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 Ms. Gallagher'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 Ms. Gallagher being afforded a prompt hearing. At any merits hearing in this matter, the State will bear the burden of proving unprofessional conduct. Our Findings and Conclusions in this matter will not absolve the State or Ms. Gallagher 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 on the evidence admitted at that hearing only.

Order

The State's Request for Summary Suspension is **Granted**. Ms. Gallagher'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, National Life Bldg., North, FL2, 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: 
Ellen Leff, RN, Chair

Date: August 9, 2010

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/10/10

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

IN RE:

ANN MARIE GALLAGHER

License No. 026.0042531

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Docket No. 2010-427

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. Ann Marie Gallagher (the "Respondent") of Rutland, Vermont is licensed by the State of Vermont as a Registered Nurse under license number 026.0042531. This license was originally issued on or about June 19, 2008 and is currently set to expire on or about March 31, 2011. Respondent has also been licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0006095. Respondent's LPN license was originally issued on or about January 20, 1987 and expired on or about January 31, 1998.
4. At all times relevant, Respondent was employed as a Registered Nurse at Mountain View Center (the "Facility"), located in Rutland, Vermont.
5. On or about July 27, 2010 in a Drug Diversion Reporting Form, Facility Administrator J.M. advised that the Facility suspected Respondent had been diverting Oxycontin from the Facility during a period of time beginning in or around April 2010. J.M. reported that Respondent had documented many times in medical records that she had popped (removed from packaging) pills in error; that Respondent documented she administered narcotics more frequently than other nurses, and in excess of physicians' orders; that new pages in the narcotic book started with discrepancies between pages; and that an alert and oriented patient denied to the Director of Nursing that she had received pain medication that the Respondent documented she administered to this patient. J.M. advised Respondent was suspended from the Facility on or about July 26, 2010.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107

6. On or about July 28, 2010 in an interview with State Investigator Jamie Palmisano, Respondent admitted that during the last six (6) months of her employment at the Facility, Respondent diverted approximately fifty (50) Oxycontin tablets from the Facility. Respondent advised that she has been suffering from emotional and personal issues and that she began diverting a couple Oxycontin tablets a week to attempt to feel better and "kill the pain" associated with these issues.
7. In this same interview, Respondent advised that in the attempt to hide her diversion, she would typically note in a patient's medical records that she administered medication to the patient, but then keep the medication and consume it after she completed working her shift. Respondent advised that prior to diverting medications, she would always ensure that the patients were medicated properly and not suffering.
8. In this same interview, Respondent advised that on some occasions, she would "pop" medications in error; document in the narcotic book that the medications were "popped in error"; but then keep the medications for herself.
9. In this same interview, Respondent stated, "The patient came first. I only took it if they did not need it."
10. Respondent has been cited to appear in Rutland District Court on or about September 20, 2010 for the charge of Fraud or Deceit.

Request for Relief

11. 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.
12. The above acts and circumstances, alone or in combination, violate:
 - a. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
 - b. ARBN Chapter 4, Subchapter 4, Rule II(B)(1) and (2) ("Inability to practice nursing competently" includes: (1) performance of unsafe or unacceptable patient care; and (2) failure to conform to the essential standards of acceptable and prevailing nursing practice);
 - c. ARBN Chapter 4, Subchapter 4, Rule II(C) ("Any cause" includes, but is not limited to, reasons of physical or mental disability or use of drugs, narcotics, chemicals, or any other type of materials);
 - d. 26 V.S.A. § 1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);

STATE OF VERMONT



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- e. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes falsifying or altering clinical records or making inaccurate or misleading entries pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(3); and diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(4);
- f. 3 V.S.A. § 129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records);
- g. 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); and
- h. 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).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 026.0042531 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 4th day of August, 2010.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Betsy Ann Wrask
State Prosecuting Attorney

nu.gallagher.sumsusp

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
9 Baldwin Street
Montpelier, VT
05609-1107