

**STATE OF VERMONT
BOARD OF NURSING**

In re: Vanessa Giambrone
License No. 025-55127

}
} Docket No. 2014-184(LPN)
}

**DECISION ON
UNPROFESSIONAL CONDUCT CHARGE**

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice Chair
Alan Weiss, Public Member
William G. White, Jr., Public Member
Deborah Swartz, RN
Douglas Sutton, RN
Sheila Davis, LPN
Luana Tredwell, LPN
Jennifer Laurent, APRN

Appearances:

Prosecuting the case: Annika Green
Respondent: did not appear

Presiding Officer: Colin Benjamin

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The Vermont Board of Nursing held a hearing in the above matter on December 8, 2014 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont.

The prosecution has the burden of proof in this matter. To prevail on any unprofessional conduct charge, it must prove the charge by a preponderance of the evidence.

Background

The Specification of Charges alleges that Respondent, in violation of Vermont Statutes, signed out 102 doses of narcotic drugs and entered only 17 of them on the MAR as being administered to patients, leaving 85 doses unaccounted for.

Findings of Fact

Based on the evidence presented, the Board finds as follows:

1. Respondent is licensed as a 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. Respondent's license was summarily suspended on August 13, 2014.
2. On March 5, 2014 and at all times relevant Respondent was employed as an LPN at the St. Johnsbury Health and Rehabilitation Center in St. Johnsbury, Vermont.
3. On March 5, 2014 a facility supervisor discovered that Respondent had checked out five narcotic medications from the patient narcotic book without documenting on the Medication Administration Record (MAR) that the drugs had been administered to patients.
4. The facility performed an audit of Respondent's medication and documentation history going back to October, 2013. For medications not prescribed on a regular schedule (prn), Respondent signed out 102 doses. Of those, Respondent documented giving only 17 to patients. 85 doses of controlled substances were unaccounted for. No record indicates that the patients for whom the drugs were withdrawn received them.
5. Respondent's documentation of 134 doses of all medications prescribed on a regular schedule (including both controlled and non-controlled substances) during that same period was complete and without error.
6. Respondent could not explain why her record keeping for prn medications was so inaccurate while her record keeping for medications prescribed on a regular schedule was correct. The essential standards of prevailing and acceptable nursing practice require accurate and complete documentation of all drugs withdrawn and administered to patients. Respondent was for some reason unable to properly document the administration of 85 doses of prn medications. We make the most logical inference, that Respondent's failure to document administration of the drugs she withdrew was because they were never given to patients and that she either diverted the drugs for her own or someone else's use." Her failure to document their administration was deceptive. Respondent diverted the drugs to her own or someone else's use.

Conclusions of Law

Based on the evidence presented and Facts found above we conclude as follows:

Re: Alleged Violation of 26 V.S.A. § 1582(a)(3) and 3 V.S.A. § 129a(b)(1) and (2):

The Prosecution has proved by a preponderance of the evidence that Respondent is unable to practice nursing competently. This is unprofessional conduct.

Re: Alleged Violation of 26 V.S.A. § 1582(a)(7): The Prosecution has proved by a preponderance of the evidence that Respondent has engaged in conduct of a character likely to deceive, defraud, or harm the public. This is unprofessional conduct.

Discussion

Withdrawing medication for patients and not documenting its administration, even when the result of an honest mistake, endangers patients. Without proper documentation it is impossible for other health care providers to know what drugs a patient has had. Another health

care provider could administer an additional dose, and the error could be fatal.

Intentional diversion of drugs intended for patients means the nurse may be taking them herself, an obvious danger to all in a facility. It may indicate that the nurse is diverting the drugs to another. In either situation, patient safety is deliberately disregarded.

Order

For the violations above, to protect the public, health, safety and welfare, the following sanction is necessary.

Respondent's license is **SUSPENDED effective the date of this decision.**

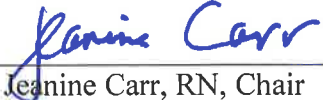
APPEAL RIGHTS

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, Office of Professional Regulation, 89 Main Street, Fl. 3, Montpelier, Vermont 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, RN, Chair

Date: December 8, 2014

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/14/14

**STATE OF VERMONT
BOARD OF NURSING**

In re: Vanessa Giambrone
License No. 025-55127

} } }
Docket No. 2014-184(LPN)

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: Annika Green
Respondent: David Sleigh

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 August 11, 2014 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. Ms. Giambrone appeared with her attorney. 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. Ms. Giambrone 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 Ms. Giambrone's record keeping regarding narcotic drugs reveals that during a six month period she signed out 102 doses of controlled substances, but only recorded 17 doses on the MAR as having been administered to the patient. The evidence submitted confirms the allegations. The vast majority of narcotic PRN drugs she signed out were not accounted for.

3. Ms. Giambrone's record keeping of non-narcotic drugs showed no record keeping errors.
4. Without proper recording by the nurse, there is no way to know whether the drugs were given to the patient or diverted for personal use or distribution to others. Failure to document presents a danger to patients because other nurses or treatment providers have no way of knowing what drugs a patient has been given. This presents a dangerous situation.
5. The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency action.
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. Summary suspension is necessary to prevent patient harm as a result of unrecorded and unaccounted for dispensing of drugs.
8. If summary suspension is not ordered, the Board believes that patient harm 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/not been established to the necessary degree. For purposes of this Summary Suspension Hearing, the Findings of Fact above do support Summary Suspension of Ms. Giambrone'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, which they have, with Ms. Giambrone 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 Ms. Giambrone 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**. Ms. Giambrone'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.

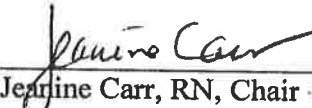
A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, 89 Main Street, Fl. 3, Montpelier, VT 05620-3402 within 30 days of the entry of this order.

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, RN, Chair

Date: August 11, 2014

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/13/14

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

IN RE:	)	
VANESSA GIAMBRONE	)	Docket No. 2014-184
License No. 025.0055127	)	

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. Vanessa Giambrone ("Respondent") of St. Johnsbury, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0055127. This active license was initially issued on or about September 8, 2009 and is currently set to expire on or about January 31, 2016.
4. At all times relevant, Respondent was employed at St. Johnsbury Health and Rehabilitation Center in St. Johnsbury, Vermont ("SJHR").
5. On or about March 5, 2014, while investigating a resident fall, supervisory staff discovered that Respondent had checked out 5 narcotic medications from the patient narcotic book without documenting on the Medication Administration Record ("MAR") that the medications were administered to the patient.
6. As a result of the above medication and documentation errors, SJHR conducted an audit of Respondent's medication and documentation history. The audit covered the time period of approximately October, 2013 through March, 2014.
7. SJHR Director of Nursing, K.L., documented the audit of Respondent's administration of controlled substances over the audit time period on a spreadsheet. The spreadsheet includes information on the drug, dosages, patients, the date and time the controlled substances were signed out of the narcotic log by Respondent, and a

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notation for each transaction indicating whether or not Respondent noted the medications as being given to the patients.

8. The spreadsheet indicates that, during the six-month audit period, approximately 102 doses of controlled substances were signed out of the narcotic log by Respondent, and of those, only 17 doses had been recorded on the MAR as being administered to the corresponding patient, leaving 85 doses of narcotics unaccounted for.
9. SJHR Director of Nursing also conducted an audit for a similar time period of Respondent's administration of non-controlled substances. This audit indicated that Respondent signed out approximately 134 non-controlled medications and all were documented as having been administered to the appropriate patient.
10. Office of Professional Regulation Investigator Dennis Menard interviewed Respondent on or about June 6, 2014. Respondent denied diverting medication for her own use, stating the problem was instead documentation. When confronted with the fact that her documentation of non-controlled substances was excellent and her poor documentation seemed to only apply to controlled substances, Respondent stated, "I don't have an answer."

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); incorporating ARBN Part 11.2(b) ("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) and ARBN Part 11.2(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);
 - b. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud or harm the public);
 - 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).

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WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0055127 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 24th day of July, 2014.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Annika Green
Annika Green
State Prosecuting Attorney

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