

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

In re: ELISE R. HAMILTON
License No. 025.0009028

}
} Docket No. 2017-45 (LPN)
}

SUMMARY SUSPENSION ORDER

Participating Board Members:

Deborah Swartz, RN, Acting Chair
Jennifer Laurent, APRN
Luana Tredwell, LPN
Kelly Sinclair, LNA
Jill Duel, LPN
William G. White, Jr., Public Member

Appearances:

Prosecuting the case: Elizabeth A. St. James, Esq.
Respondent: was present but not represented

Presiding Officer:

George K. Belcher

**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 June 12, 2017, at the Office of Professional Regulation in Montpelier, Vermont.

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 as follows:

1. Respondent is a Licensed Practical Nurse licensed in Vermont. Her license is set to expire on January 31, 2018. She is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, 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 Respondent was sent a notice of the hearing on May 16, 2017 by certified mail and regular mail. The Respondent received this notice.
3. The Respondent appeared at the hearing by herself, without counsel. After a brief explanation of the summary suspension process, and that the Respondent did not have to present evidence, the Respondent indicated that she did not object to the admission of State's Exhibit 1 which showed the results of a urinalysis test of the Respondent on or about January 9, 2017. She also provided testimony and addressed the Board concerning her situation.
4. The State presented the testimony of Maire Burns, RN, who is the Nurse Education Coordinator at the Rutland Health and Rehabilitation facility. Ms. Burns is also a former Vermont State Trooper and she is familiar with persons who are abusing drugs.
5. On January 9, 2017 Ms. Burns was working and was called to assess the Respondent who was on shift and was reported to be acting in a "strange way". Ms. Burns observed the Respondent at the nurses' station and again in Ms. Burns' office. Ms. Burns determined that the Respondent was not "alert or oriented" and she suspected that the Respondent was under the influence of drugs. Pursuant to the policy of the facility, Ms. Burns requested that the Respondent consent to a urinalysis test for substances. This was done at the Rutland Regional Hospital. The results of the test were reported on or about January 16, 2017 (State Exhibit 1).
6. The test results were positive for opiates (morphine) and cocaine.
7. The Respondent testified that she admitted that she was working when she was "way too tired". She did not contest that she had drugs in her system when she was tested on January 9, 2017.¹
8. The Respondent generally explained to the Board that she has a history of bi-polar disorder and heroin addiction. She suffered various personal problems and she relapsed in her heroin use on December 31, 2016 (just nine days before the incident on January 9, 2017). She admitted that the drugs in her system as shown on the urinalysis test could easily be the consequence of her drug use during her relapse.
9. The Respondent is not currently working as a nurse and stated that she needed to take a break from nursing.
10. There is ample evidence that the Respondent has practiced her profession when medically or psychologically unfit to do so and that the Respondent failed to exercise independent professional judgment in the performance of licensed activities. 3 VSA Sec. 129a(a)(5) and Sec. 129a(a)(15). Clearly, the patients under her care at the time of this incident were at risk.
11. The evidence presented show facts which imperatively require emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm, and to protect the general integrity of the medical profession.

¹ The testimony was that the urinalysis was taken on January 9, 2017 but the test result (State Ex. 1) indicates that the sample was taken on January 10, 2017. This discrepancy is not deemed to be significant but is unexplained at this point.

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.

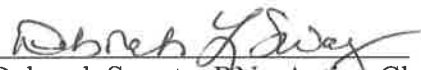
The Prosecutor's Request for a Summary Suspension is supported by the evidence presented. The Board concludes that the allegations in the Request for Summary Suspension have been established to the necessary degree. For purposes of this Summary Suspension Hearing, the Findings of Fact above do support Summary Suspension of Respondent'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 Respondent 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 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 Request for Summary Suspension is **Granted**. Respondent'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).

Vermont Board of Nursing

By: 
Deborah Swartz, RN, Acting Chair

Date: June 16, 2017

DATE OF ENTRY: 6/19/17

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.

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IN RE:	)	
ELISE R. HAMILTON	)	Docket No. 2017-45
License No. 025.0009028	)	

REQUEST FOR SUMMARY SUSPENSION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Elizabeth A. St. James, and petitions the Board of Nursing to summarily suspend the license of Licensed Practical Nurse Elise R. Hamilton. In support of such petition, the State alleges the following:

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. Elise R. Hamilton ("Respondent") of Bennington, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse ("LPN") under license number 025.0009028. This license was originally issued August 28, 2006, and expires on January 31, 2018.
4. At all relevant times, Respondent was employed as an LPN at the Rutland Health and Rehabilitation Center (the "Facility") in Rutland, VT.
5. On January 9, 2017, Respondent, while at work at the Facility, appeared to be under the influence of an unknown substance or substances. She was observed to be swaying back and forth while standing, holding on to a desk to steady herself, and appeared to fall asleep during conversation. It also appeared as if her head was constantly drooping and her eyes were unable to focus.
6. Respondent was accompanied by two staff members from the Facility to Occupational Health Partners, PLLC in Rutland, Vermont to provide a urine sample.

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7. Respondent's urine sample tested positive for morphine and benzoylecgonine, a cocaine metabolite.

Violation One: 3 V.S.A. 129a(a)(5) Practicing the profession when medically or psychologically unfit to do so.

8. The State re-alleges and incorporates Paragraphs 3 through 7 above.
9. As a Licensed Practical Nurse, Respondent has a responsibility to not practice when medically or psychologically unfit to do so.
10. Respondent practiced as a Licensed Practical Nurse when medically or psychologically unfit to do so, as demonstrated by Paragraphs 5 through 7 above.
11. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(5).

Violation Two: 3 V.S.A. §129a(a)(15) 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.

12. The State re-alleges and incorporates Paragraphs 3 through 7 above.
13. As a Licensed Practical Nurse, Respondent is required to exercise her own independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
14. Respondent's conduct in Paragraphs 5 through 7 above demonstrate Respondent's failure to exercise her own professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
15. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

Violation Three: 3 V.S.A. §129a(b)(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: (2) failure to conform to the essential standards of acceptable and prevailing practice.

16. The State re-alleges and incorporates Paragraphs 3 through 7 above.

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17. The essential standards of acceptable and prevailing practice for Licensed Practical Nurses require that they refrain from being impaired by controlled substances while on the job.
18. Respondent failed to meet this standard by engaging in the conduct stated in Paragraphs 5 through 7 above.
19. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(2).
20. Respondent currently has an unencumbered license. Members of the public, patients, and potential patients have no way of learning of Respondent's dangerous behavior and will remain unprotected pending suspension of Respondent's license. 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.

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0009028 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 16th day of May, 2017.

STATE OF VERMONT
SECRETARY OF STATE

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