

**STATE OF VERMONT
BOARD OF NURSING**

In re: Christine L. Harte
License No. 025-8460

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Docket No. 2009-376 (LPN)

2009-532

2009-593

Appearances:

Petitioner, State of Vermont: Betsy Ann Wrask

Respondent: Did not appear

Presiding Officer: Larry S. Novins

**Decision on Unprofessional Conduct Charges
Default Order**

The Board held a hearing on the above matter on November 8, 2010 at the National Life Building in Montpelier, Vermont. Ms. Harte did not attend and was not represented by counsel.

Findings of Fact

1. Ms. Harte 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.
2. Ms. Harte's license was summarily suspended by the Board in June 2010.
3. On June 23, 2010 Ms. Harte was sent a Notice of Charges in this matter by certified mail to her last known address. A copy of the Specification of Charges is attached to this Default Order.
4. 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.
5. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14).
6. Ms. Harte received the Specification of Charges.
7. On July 13, 2010 Ms. Harte mailed an answer to the charges. She wrote, "Ms. Harte pleads Nolo Contendere except for Disputed Issues of Fact listed below."
8. Ms. Harte disputed only the allegation that she said, "If they did not, I would divert it."
9. On August 30, 2010 the parties participated in a Prehearing Conference at which Ms. Harte indicated none of the facts would be disputed and that the parties would have a disposition hearing at which they would present their positions on sanction to the Board. The parties agreed to setting this hearing for the Board's November 8, 2010 meeting date.
10. Notice of this hearing was mailed to Ms. Harte at that same address by certified mail. The file shows that the notice was "unclaimed, unable to forward."
11. The prosecutor has attempted to contact Ms. Harte to no avail.
12. V.R.C.P. 55 permits the Board to enter a Default.

"Failure to Appear at Trial. In those cases in which a defendant has appeared in the action but has failed to appear at a duly noticed trial on the merits, the plaintiff may either move for default or proceed to trial. If plaintiff obtains judgment based on evidence submitted at trial, that judgment shall be deemed a default judgment solely for the purposes of Rule 55(c), Rule 62(b) and Vermont Rule of Appellate Procedure 4."

13. The Board finds Ms. Harte to be in Default. The allegations contained in the State's Specification of Charges are therefore found as true. V.R.C.P. and OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

Ms. Harte has received adequate and actual notice of the charges in this matter as indicated by the Board's file and the State's presentation. She does not contest the factual allegation except that part of #12 referred to above.

Because Ms. Harte has failed to appear at this duly noticed hearing of which she had actual notice, the Board finds that State's factual allegations have been proved. O.P.R. Rule 3.4. Accordingly, the Board finds that the State has proved its charges.

1. The prosecution has proved by a preponderance of the evidence that Ms. Harte violated the statutes and rules set forth in the State's Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Ms. Harte's license is hereby **Revoked**.

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
Ellen Leff, R.N., Chair

Date: November 8, 2010

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 11/9/10

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

IN RE:

CHRISTINE L. HARTE

License No. 025.0008460

)
) Docket Nos. 2009-376; 2009-532; 2009-593
)

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Christine L. Harte, LPN:

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. Christine L. Harte (the "Respondent") of Rutland, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0008460. This license was originally issued on or about January 8, 2004 and is currently set to expire on or about January 31, 2012.

Statement of Facts re: Docket Nos. 2009-376 and 2009-532

3. At all times relevant, Respondent was employed as a Licensed Practical Nurse at Rutland Health & Rehabilitation ("Rutland Health & Rehab"), located in Rutland, Vermont.
4. From on or about May 30, 2009 to on or about June 23, 2009, there were at least six (6) occasions when Respondent documented in Patient A.B.'s medical records that she administered one (1) Percocet 5/325 tablet to A.B. on days that Respondent was not working at Rutland Health & Rehab.
5. From on or about May 30, 2009 to on or about August 15, 2009, there were at least seven (7) occasions when Respondent documented in Patient C.V.'s medical records that she administered two (2) Oxycodone/APAP 5/325 tablets to C.V. on days that Respondent was not working at Rutland Health & Rehab.

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Professional Regulation
9 Baldwin Street
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05609-1107

6. On or about September 8, 2009, Respondent was terminated from Rutland Health & Rehab after she admitted that she pre-documented in Patient M.L.'s Medication Administration Record that she administered Zocor and Lorazepam to M.L.; then became distracted and forgot to actually administer these medications to this patient; and thereafter did not correct the record or notify M.L.'s physician or the oncoming nursing staff of her failure to administer the medications.

Statement of Facts re: Docket No. 2009-593

7. At all times relevant, Respondent was employed as a Licensed Practical Nurse at The Pines, located in Rutland, Vermont.
8. From on or about December 8, 2009 to on or about December 21, 2009, Respondent was the only nurse who documented administering Patient J.W. Oxycodone/APAP 5/325 tablets. There were approximately fifteen (15) such consecutive documented administrations, made only by Respondent. During this time frame, there were at least four (4) occasions when Respondent documented in J.W.'s medical records that she administered Oxycodone/APAP 5/325 tablets to J.W. at times of day when Respondent was not working at The Pines.
9. On or about December 20, 2009, Respondent documented in Patient K.W.'s medical record that she administered one (1) Oxycodone 5mg tablet to K.W. at a time of day when Respondent was not working at The Pines.
10. On or about December 21, 2009, Registered Nurse M.S. called Respondent regarding the inconsistencies in medication administration described above, and Respondent agreed to come in before her next scheduled shift to explain these inconsistencies. However, Respondent then called back several minutes later to say that she was resigning from The Pines, effective immediately.
11. A review of Respondent's personnel file indicates that on or about November 24, 2009, Respondent received a Warning for continuing to leave prescriptions and medications unsigned. It was noted that Respondent had been previously counseled regarding the need to make sure all of her work has been completed and signed accordingly. Moreover, Respondent was counseled on this date for administering Vicodin for general discomfort, when this narcotic was to be administered only when a patient had a specific pain and there was a pain assessment in place.

Statement of Facts re: Respondent's Interview

12. On or about April 26, 2010 in an interview with State Investigator Jamie Palmisano to review the inconsistencies between Respondent's documentation at both Rutland Health & Rehab and The Pines and her work hours, Respondent admitted that she diverted medications from these two facilities. Respondent estimated she diverted approximately ten (10) tablets of Percocet from both facilities combined; however, Respondent indicated that the number of Percocet tablets she diverted could certainly

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

be more than ten. Respondent stated that she began diverting Percocet from these facilities because she suffers from a painful physical ailment and her own prescription dosage was not enough to curb the pain, and her prescription ran out. Respondent stated, "If a patient needed it [Percocet], I would give it to them. If they did not, I would divert it." Respondent stated she is better now and does not believe she needs substance abuse treatment.

13. Respondent has been cited to appear in Rutland County District Court on or about July 12, 2010 for Prescription Fraud or Deceit.

Statement of Facts re: Respondent's Convictions and Applications

14. On or about July 27, 2000 in an Application for Licensure by Examination as an LPN, Respondent answered "No" to the question "Have you been convicted of a crime other than a minor traffic violation?" In this application, Respondent failed to disclose that on or about July 3, 2000, Respondent pleaded guilty to Driving with License Suspended #1 in Rutland District Court under docket number 963-6-00 Rdc.
15. On or about August 16, 2001 in an Application for Licensure by Examination as an LPN, Respondent answered "No" to the question "Have you been convicted of a crime other than a minor traffic violation?" In this application, Respondent failed to disclose the following convictions:
- a. On or about July 3, 2000, Respondent pleaded guilty to Driving with License Suspended #1 in Rutland District Court under docket number 963-6-00 Rdc.
 - b. On or about March 26, 2001, Respondent pleaded guilty to Driving with License Suspended in Rutland District Court under docket number 403-3-01 Rdc.
 - c. On or about June 18, 2001, Respondent pleaded guilty to Driving While Intoxicated #1 in Rutland District Court under docket number 794-6-01 Rdc.
 - d. On or about June 18, 2001, Respondent pleaded guilty to Driving with License Suspended #1 in Rutland District Court under docket number 794-6-01 Rdc.
16. On or about August 18, 2003 in an Application for Licensure as an LPN, Respondent answered "Yes" to the question "Have you been convicted of a crime other than a minor traffic violation?" and revealed her 2001 DWI conviction, but failed to reveal her three (3) Driving with License Suspended convictions, enumerated above in ¶15.
17. On or about June 14, 2010, the Board summarily suspended Respondent's license.

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

Charges

18. 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)(1) (Has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice nursing);
 - b. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause);
 - c. 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);
 - d. 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);
 - e. 26 V.S.A. § 1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);
 - f. 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); diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(4); and aiding, abetting, or assisting any person in any act in violation of this chapter or acts against the best interest of the public pursuant to ARBN Chapter 4, Subchapter 4, Rule II(D)(10);
 - g. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - h. 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);
 - i. 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

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

unacceptable patient or client care; or (2) failure to conform to the essential standards of acceptable and prevailing practice); and

- j. 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).

Relief Requested

WHEREFORE, the license of Christine L. Harte should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 15th day of June, 2010.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

BetsyAnn Wrask
State Prosecuting Attorney

nu.harte.soc

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