

**STATE OF VERMONT
BOARD OF NURSING**

In re: Colleen Herrity	}	
License No. 026.0012177	}	Docket No. 2016-213 (RN)
	}	

SUMMARY SUSPENSION ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice-Chair
William G. White, Jr., Public Member
Deborah Swartz, RN
Jennifer Laurent, APRN
John Welch, Jr., Public Member
Luana Tredwell, LPN

Appearances:

Prosecuting the case: Elizabeth Jarvis, Esq.
Respondent: did not appear

Presiding Officer:

George K. Belcher

Exhibits:

State Ex. 1: Stipulation and Consent Order dated May 12, 2003 of Vermont Board of Nursing
State Ex. 2: Affidavit of State Trooper Christopher Pilner dated May 11, 2016

**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 13, 2016 at the Office of Professional Regulation in Montpelier, Vermont. Respondent did not appear.

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 Registered Nurse, licensed in Vermont. Her license is currently

set to expire on or about March 31, 2017. She is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. § 1595 & 1598, 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 for Summary Suspension alleges that the public health, safety or welfare imperatively requires emergency action.
3. Notice of this hearing was personally served upon the Respondent prior to the hearing. The Respondent did not appear at the hearing or otherwise defend.
4. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
5. The State presented the Board with two items of evidence. The first is the affidavit of Trooper Christopher Pilner of the Vermont State Police dated May 11, 2016. (State Ex. 2) The trooper was investigating an alleged diversion of medications by the Respondent at the St. Johnsbury Health and Rehabilitation Center in St. Johnsbury, Vermont, where the Respondent worked. On March 25, 2016 the Respondent admitted to her Director of Nursing that she had been "diverting" which was understood to mean diverting drugs. On March 29, 2016 during the investigation, the Respondent admitted to Trooper Pilner that she had diverted Oxycodone from her work for personal use. She admitted to the trooper that she often surreptitiously took medications which should have been wasted and that she may have diverted medications from patients although she could not remember. The Respondent admitted to the trooper that she may have been diverting medications for about six months.
6. The second item of evidence was a Stipulation and Consent Order dated May 12, 2003. (State Ex. 1) In that stipulation the Respondent stipulated: (1) on March 13, 1989 she admitted that she had diverted drugs for personal use while working as a Registered Nurse; (2) on September 12, 1994 the Respondent admitted that she was intoxicated while working as a Registered Nurse and that she was unable to practice due to the use of drugs or other materials; (3) on July 10, 1995 the Respondent admitted that she had violated conditions on her license because she had diverted drugs for her personal use and, further, that her addiction to drugs, intemperate use of alcohol and physical, mental or emotional disability, interfered with her ability to practice nursing competently.
7. The Respondent has a history of drug use and diversion of drugs and the evidence is compelling that she has, again, diverted a regulated narcotic in the course of her work.

Conclusions of Law

The alleged diversion of regulated drugs which was alleged and which has been adequately established is a violation of 26 VSA Sec. 1582(a)(2) [drug diversion], 26 VSA Sec. 1582(a)(3) [deceptive conduct], 3 VSAS Sec. 129a(a)(7) [false reporting and false record keeping] and 3 VSA Sec. 129a(b)(1 and 2) [failure to practice competently]. The diversion of regulated drugs by a Registered Nurse presents a serious risk to the public and to the profession. The public health, safety and welfare require that emergency action be taken in the form of a temporary suspension of the Respondent's nursing license. 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: Jeanine Carr

Date: June 13, 2016

Jeanine Carr, RN, Chair of the Board

DATE OF ENTRY: 6/17/16

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.

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

IN RE:)
COLLEEN HERRITY) **Docket No. 2016-213**
License No. 026.0012177)

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. Colleen Herrity (the "Respondent") of Saint Johnsbury, Vermont is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0012177. This license was originally issued on or about September 8, 1977, and expires on or about March 31, 2017.
4. Respondent has been previously disciplined under docket number NU 25-0193. Respondent currently holds an unencumbered license.
5. During the relevant time period, Respondent was employed as an RN at St. Johnsbury Health and Rehabilitation Center (the "Facility"), located in Johnsbury, Vermont.
6. On or about March 25, 2016, Respondent reported to her supervisor that she had been diverting narcotics for her personal use.
7. On or about March 29, 2015, Respondent admitted to Trooper Christopher Pilner that she was diverting medication out of the wasted narcotics. Respondent stated that she was diverting Oxycodone for the previous six months.

Charges

STATE OF VERMONT



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

8. The above acts and circumstances, alone or in combination, violate:
- a. 26 V.S.A. §1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use);
 - b. 26 V.S.A. §1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public);
 - c. 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); and,
 - d. 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 026.0012177 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 6 day of June, 2016.

STATE OF VERMONT
SECRETARY OF STATE

By:



S. Lauren Hibbert
State Prosecuting Attorney

STATE OF VERMONT



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