

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

IN RE:	)	
JAY J. HUTCHINS	)	Docket No. M2014-2/
License No. 025.0009255	)	2012-533

**REINSTATEMENT AND MODIFICATION STIPULATION
AND CONSENT ORDER**

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Jay J. Hutchins, 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.

Stipulated Facts

2. Jay J. Hutchins ("Respondent") of Plattsburgh, New York is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0009255. This license was originally issued on or about August 2, 2007 and expired on or about January 31, 2014. Respondent is currently inactive and suspended.
3. On February 11, 2013, Respondent's license was summarily suspended pursuant to a default hearing on docket number 2012-533. The facts found at that hearing included that Respondent diverted narcotic medication for his personal use, sometimes while at work. See, Attachment A.
4. On or about January 20, 2015, Respondent requested reinstatement.
5. Prior to entering into this stipulation the investigatory team received the following:
 - a. On March 19, 2015, an independent evaluation from James Garrett, LCSW who stated that Respondent was safe to practice.

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- b. The results of three random drug and alcohol tests within a 45 day period. The results of which were all negative.
- c. On September 2, 2015, a letter from New York State, County of Franklin Department of Probation which states that Respondent is fully compliant with the terms of his probation.

Understandings

- 7. Respondent acknowledges that the facts above are true and that the conditions set out in the Consent Order below are appropriate and necessary to protect the public.
- 8. 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.
- 9. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced Respondent's rights to a fair and impartial hearing if this agreement is not accepted by the Board and proceeds to a contested hearing.
- 10. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
- 11. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
- 12. 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.
- 13. Respondent voluntarily waives Respondent's right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
- 14. 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. Respondent is allowed to apply for reinstatement. 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:

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1. Re-issuance 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 Respondent works at least forty (40) hours every two (2) weeks as a nurse. Part time hours of fewer 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, Treatment Plan, Treatment Reports and recovery groups. If recommended by Independent Evaluator, Respondent shall enter into and continue substance abuse counseling and comply with substance abuse treatment plan until the pre-approved treating professional certifies in writing to the Board that such counseling is no longer necessary.

Respondent shall authorize Respondent's treating professional to submit to the Board **monthly** reports on forms issued by the Board. Respondent shall authorize Respondent's 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.

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

4. 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. This condition is INDEFINITE and at the discretion of the Director of the Board of Nursing or his or her delegate. Removal of this request shall only occur through a petition heard by the Board.

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 constitute a violation of this Order.

5. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.

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6. Drug Use Exception. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent health care practitioner shall 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. Additionally, the practitioner shall inform the Board 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 that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. 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.

7. 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 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.

8. 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 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

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audits of Respondent's medication administration and practices. In the event 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 Respondent's performance and attendance. 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.

9. 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.
10. Administration of Medications. Respondent is prohibited from administering any controlled substances. This condition may be removed only by Respondent filing a petition with the Board after Respondent 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, Respondent must demonstrate, to the satisfaction of the Nursing Board or its designee, that Respondent can safely and competently administer such medications. Respondent must include appropriate support from Respondent's 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.

11. 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.
12. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
13. 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. The Board will approve out-of-state nursing practice so long as Respondent can still comply with the provisions of this Consent Order. If Respondent receives discipline on a nursing license held in another state during the conditioned period, Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.

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14. 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 Respondent's 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 (including resignation or termination), personal address, or telephone number.
15. Notification to Other States. In the event that Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.
16. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
17. Release of Information Forms. This Order requires Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss Respondent and any and all treatment rendered to Respondent for drugs and/or alcohol with the Board or its designee. Any and all of this information may 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.

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing license.

This Stipulation and Consent Order shall itself constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31. Respondent understands that Respondent's treatment provider may require Respondent's to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

18. Costs. Respondent shall bear all costs of complying with this Consent Order.
19. Violation of this Order. If Respondent violates this Order the Board, after giving 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 Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
20. Completion of Conditional License Period. Respondent must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order.

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Respondent must also present proof of successful substance abuse rehabilitation, that Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.

- B. Notwithstanding any provision above, the Respondent must continue to meet all 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: November 4, 2015

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
S. Lauren Hibbert
State Prosecuting Attorney

JAY J. HUTCHINS
RESPONDENT

Dated: November 2nd 2015

By: [Signature]
Jay J. Hutchins

APPROVED AND SO ORDERED:

Dated: 11/9/15

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

Date of Entry: 11/10/15

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**STATE OF VERMONT
BOARD OF NURSING**

In re: Jay J. Hutchins
License No. 025-9255

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} Docket No. 2012-533(LPN)

Appearances:

Petitioner, State of Vermont: Gabriel Gilman
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board held a hearing on the above matter on February 11, 2013 at Capitol Plaza in Montpelier, Vermont. Mr. Hutchins did not attend and was not represented by counsel.

Findings of Fact

1. Mr. Hutchins 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. On October 8, 2012 this Board summarily suspended Mr. Hutchins' license pending promptly instituted filing and resolution of proceedings "for revocation of other action." 3 V.S.A. 814(c).
3. On December 5, 2012 Mr. Hutchins was sent a Notice of Charges in this matter by certified mail to his 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. Postal Service stamps on the envelope indicate the notice of charges was not delivered as Mr. Hutchins had "moved left no forwarding address."
7. Mr. Hutchins has not filed an answer to the charges.
8. On January 4, 2013 and January 28, 2013 notices of the Default Hearing scheduled for this date were mailed to Mr. Hutchins at that same address by certified mail. Again, he did not receive them because he "moved left no forwarding address."
9. Mr. Hutchins has still not answered the charges.
10. Upon hearing the State's presentation and taking notice of its own file, the Board finds Mr. Hutchins to be in Default. The allegations contained in the State's Specification of Charges are therefore treated as the facts on which the Board's Order is based. OPR Rule 3.4, 3 V.S.A. § 809(d) and 3 V.S.A. § 814(c).

Conclusions of Law

Mr. Hutchins has received adequate or constructive notice of the charges in this matter as indicated by the Board's file and the State's presentation. Because Mr. Hutchins has failed to answer the charges, the State's factual allegations are treated as if proved. O.P.R. Rule 3.4. Accordingly, the Board finds, in this Default Hearing held pursuant to 3 V.S.A. §809(d), that Mr. Hutchins has engaged in the unprofessional conduct alleged in the State's Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Mr. Hutchins's license is hereby *suspended indefinitely*, effective as of the date of the hearing. Should Mr. Hutchins apply for reinstatement, the Board at that time will determine whether any conditions can permit him to resume practice while protecting public health and safety.

Appeal Rights

This is a final administrative determination by the Vermont Board of Nursing.

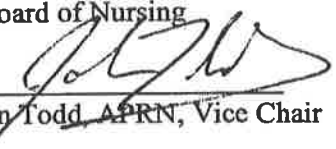
A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, National Life Bldg., North, FL2, Montpelier, VT 05620-3402 within 30 days of the entry of this order.

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:


John Todd, APRN, Vice Chair

Date: February 12, 2013

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/22/13

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

IN RE:
JAY J. HUTCHINS
License No. 025.0009255

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)

Docket No. 2012-533

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Jay J. Hutchins, 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. Jay J. Hutchins ("Respondent") of Plattsburgh, New York is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0009255. This license was originally issued on or about August 2, 2007 and expires on or about January 31, 2014.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse by Burlington Health and Rehabilitation Center (the "Facility"), in Burlington, Vermont.
4. On or about August 21, 2012, L.M., R.N., Director of Nursing at the Facility, learned that Respondent was taking an unusually high amount of narcotic medications out of the Pyxis machine.
5. An internal investigation conducted by the Facility found that Respondent had removed a total of one-hundred-twenty-four (124) Dilaudid 2 mg tablets from the Pyxis machine for patient D.G. during the time period beginning on or about July 14, 2012 and ending on or about August 23, 2012. During the same time period, no other nurse removed more than five (5) Dilaudid 2 mg tablets for patient D.G.
6. L.M. also reviewed the available records from the on-floor medication cart, and found that Respondent had removed eighty-three (83) 2 mg tablets of Hydromorphone for patient D.G. during the time period beginning on or about July 14, 2012 and ending

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on or about August 15, 2012. The records from the on-floor medication cart for August 1, 2012 through August 12, 2012 were found to be missing.

7. Patient D.G. was prescribed one (1) 2mg tablet of Dilaudid at a time. The Pyxis report indicated Respondent was taking out four (4) 2 mg tablets of Dilaudid at a time for D.G.
8. On or about August 23, 2012, L.M. met with Respondent and discussed the findings of the internal investigation. Respondent initially stated that he had removed the Dilaudid for other nurses "to do them a favor ... help each other out."
9. During the August 23, 2012 meeting, Respondent had visible "track marks" on his arms from IV drug use. When confronted with this observation, Respondent became hysterical and out of control. Respondent made suicidal statements and stated that he was a "drug addict." Respondent said, "I used it to shoot up," referring to the Dilaudid.
10. During an interview with OPR Investigator Dennis Menard and Chief Investigator Jamie Palmisano, on or about August 31, 2012, Respondent admitted to taking Dilaudid from the Pyxis machine for personal use. Respondent stated that he would take 8 mg of Dilaudid every four hours and would take up to twelve (12) 2 mg tablets of Dilaudid per shift. Respondent stated that this went on for about two months. Respondent stated that he had given Dilaudid to patient D.G. "maybe one or two times." Respondent stated that he had become addicted to the Dilaudid and was "shooting it up."
11. During an interview with OPR Investigator Dennis Menard, on or about September 5, 2012, D.G. stated that he had been a resident at the Facility since June of 2012 and he sometimes had pain from cancer. D.G. stated that his pain was well controlled by taking Tylenol, and had only taken medication other than Tylenol for pain on two or three occasions.

Charges

12. 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) which includes performance of unsafe or unacceptable patient care pursuant to ARBN Rule 11.2(b)(1) and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Rule 11.2(b)(2);
 - b. 26 V.S.A. § 1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);

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- c. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN Rule 11.2(d)(4);
- 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); and
- e. 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 Jay J. Hutchins should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 5th day of December, 2012.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Gabriel Gilman
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
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National Life Building
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**STATE OF VERMONT
BOARD OF NURSING**

In re: Jay J. Hutchins
License No. 025-9255

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Docket No. 2012-533(LPN)

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: Did not appear

Presiding Officer: Larry S. Novins

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

On October 8, 2012 this matter came before the Board of Nursing on the State's Request for a Summary Suspension. Mr. Hutchins 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. 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. Mr. Hutchins 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 State has filed a "Request for Summary Suspension." A copy of the Request is attached to this Decision and Order. The Request alleges that Mr. Hutchins, among other things was responsible for large amounts of missing drugs from his place of employment, using them himself, and being addicted to them.
3. The State further alleges that the public health, safety or welfare imperatively requires emergency action.
4. Notice of this hearing was sent to Mr. Hutchins at his last known address via certified

- mail dated October 3, 2012.
5. The Board finds for purposes of this hearing that Mr. Hutchins was taking and using addictive drugs while at work.
 6. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
 7. The evidence presented does imperatively require emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent Mr. Hutchins from working while impaired and injuring patients. 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 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 support Summary Suspension of Mr. Hutchins'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 Mr. Hutchins 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 Mr. Hutchins 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 State's Request for Summary Suspension is **Granted**. Mr. Hutchins'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:


John Todd, APRN, Vice Chair

Date: October 8, 2012

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 10/9/12

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

IN RE:
JAY J. HUTCHINS
License No. 025.0009255

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)

Docket No. 2012-533

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. Jay J. Hutchins ("Respondent") of Plattsburgh, New York is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0009255. This license was originally issued on or about August 2, 2007 and expires on or about January 31, 2014.
4. At all times relevant, Respondent was employed as a Licensed Practical Nurse by Burlington Health and Rehabilitation Center (the "Facility"), in Burlington, Vermont.
5. On or about August 21, 2012, L.M., R.N., Director of Nursing at the Facility, learned that Respondent was taking an unusually high amount of narcotic medications out of the Pyxis machine.
6. An internal investigation conducted by the Facility found that Respondent had removed a total of one-hundred-twenty-four (124) Dilaudid 2 mg tablets from the Pyxis machine for patient D.G. during the time period beginning on or about July 14, 2012 and ending on or about August 23, 2012. During the same time period, no other nurse removed more than five (5) Dilaudid 2 mg tablets for patient D.G.
7. L.M. also reviewed the available records from the on-floor medication cart, and found that Respondent had removed eighty-three (83) 2 mg tablets of Hydromorphone for patient D.G. during the time period beginning on or about July 14, 2012 and ending

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on or about August 15, 2012. The records from the on-floor medication cart for August 1, 2012 through August 12, 2012 were found to be missing.

8. Patient D.G. was prescribed one (1) 2mg tablet of Dilaudid at a time. The Pyxis report indicated Respondent was taking out four (4) 2 mg tablets of Dilaudid at a time for D.G.
9. On or about August 23, 2012, L.M. met with Respondent and discussed the findings of the internal investigation. Respondent initially stated that he had removed the Dilaudid for other nurses "to do them a favor ... help each other out."
10. During the August 23, 2012 meeting, Respondent had visible "track marks" on his arms from IV drug use. When confronted with this observation, Respondent became hysterical and out of control. Respondent made suicidal statements and stated that he was a "drug addict." Respondent said, "I used it to shoot up," referring to the Dilaudid.
11. During an interview with OPR Investigator Dennis Menard and Chief Investigator Jamie Palmisano, on or about August 31, 2012, Respondent admitted to taking Dilaudid from the Pyxis machine for personal use. Respondent stated that he would take 8 mg of Dilaudid every four hours and would take up to twelve (12) 2 mg tablets of Dilaudid per shift. Respondent stated that this went on for about two months. Respondent stated that he had given Dilaudid to patient D.G. "maybe one or two times." Respondent stated that he had become addicted to the Dilaudid and was "shooting it up."
12. During an interview with OPR Investigator Dennis Menard, on or about September 5, 2012, D.G. stated that he had been a resident at the Facility since June of 2012 and he sometimes had pain from cancer. D.G. stated that his pain was well controlled by taking Tylenol, and had only taken medication other than Tylenol for pain on two or three occasions.

Request for Relief

13. 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.
14. 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) which includes performance of unsafe or unacceptable patient care pursuant to ARBN Rule 11.2(b)(1) and failure to conform to the essential standards of acceptable and prevailing nursing practice pursuant to ARBN Rule 11.2(b)(2);

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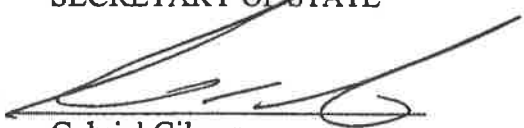
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- b. 26 V.S.A. § 1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);
- c. 26 V.S.A. § 1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) which includes diverting supplies, equipment, or drugs for personal or other unauthorized use pursuant to ARBN Rule 11.2(d)(4);
- 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); and
- e. 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, pursuant to 3 V.S.A. § 814(c), the State of Vermont requests that the Board summarily suspend the Respondent's nursing license, numbered 025.0009255, pending further proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

DATED at Montpelier, Vermont this 2nd day of October, 2012.

STATE OF VERMONT
SECRETARY OF STATE

By: 

Gabriel Gilman
State Prosecuting Attorney

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