

**STATE OF VERMONT  
BOARD OF NURSING**

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

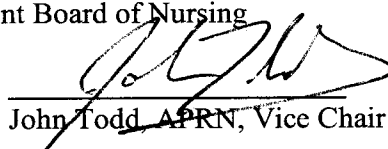
A party aggrieved by a final decision of a board may appeal this decision by filing a written Notice of Appeal with the Director of the Office of Professional Regulation, Vermont Secretary of State, National Life Bldg., North, FL2, Montpelier, VT 05620-3402 within 30 days of the entry of this order.

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

STATE OF VERMONT



Prosecuting Attorney  
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Montpelier, VT  
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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 5<sup>th</sup> day of December, 2012.

STATE OF VERMONT  
SECRETARY OF STATE

By: \_\_\_\_\_

Gabriel Gilman  
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney  
Office of  
Professional Regulation  
National Life Building  
Second Floor North  
Montpelier, VT  
05620-3602

**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.
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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.
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#### **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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- 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 2<sup>nd</sup> day of October, 2012.

STATE OF VERMONT  
SECRETARY OF STATE

By: \_\_\_\_\_

Gabriel Gilman  
State Prosecuting Attorney

STATE OF VERMONT



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