

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

In re: Melissa A. Kempton	}	
License No. 026.0076136	}	Docket No. 2016-433 (RN)
	}	

SUMMARY SUSPENSION ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Deborah Swartz, RN
William G. White, Jr., Public Member
Kelly Sinclair, LNA
Jennifer Laurent, APRN
John Welch, Jr., Public Member
Douglas Sutton, RN
Luana Tredwell, LPN
Virginia Hudson, RN

Appearances:

Prosecuting the case: S. Lauren Hibbert, Esq.
Respondent: appeared with counsel, Elizabeth Davis Mann, Esq.

Presiding Officer:

George K. Belcher

Exhibits:

None

**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 October 10, 2016 at the Office of Professional Regulation in Montpelier, Vermont. Respondent appeared with counsel.

Findings of Fact

Based on a Review of the pleadings and the file, and on the evidence and argument presented to the Board at the hearing, the Board finds as follows:

1. Respondent is a 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. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation.
2. 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.
3. 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.
4. Notice of this hearing was mailed to the Respondent at the address on file with the Board prior to the hearing. The Respondent and her attorney received the Request for Summary Suspension shortly before the hearing.
5. This case was investigated by Dennis Menard who is an investigator with the Office of Professional Regulation.
6. The Respondent admitted to Investigator Menard that she had diverted narcotic pain medications from patients at her employment for her personal use. According to the Request for Summary Suspension the Respondent admitted to diverting Percocet and Vicodin. The diversion involved the Respondent taking the patient's medication and charting that the medication had been given.
7. In March of 2016 (prior to the diversion) the Respondent underwent oral surgery and was prescribed pain medication related to her surgery. Rather than seeking adjustments to her pain prescriptions from her treating dentist and oral surgeon, the Respondent diverted medications from her patients.
8. The Respondent did this more than two times but less than ten times.
9. The Respondent has previously been treated with Suboxone although she stated to Investigator Menard that she was not in the Suboxone program at the time of the diversion. Suboxone is commonly a medication used for the treatment of opiate addiction.
10. In argument, the Respondent's counsel indicated that the Respondent is currently working as a Registered Nurse as a nurse manager but would only have access to medications in the event that it was necessary for her to fill in for other nurses.

Conclusions of Law and Discussion

The State has alleged that the Respondent has violated 26 V.S.A. Sec. 1582(a)(2) which allows discipline of an applicant or licensee who engages in conduct of diverting drugs for unauthorized use. In addition, the State alleges that the Respondent violated 3 V.S.A. Sec. 129a(a)(2) (willfully making false reports). The facts of this case, as admitted by the Respondent to Investigator Menard, justify a finding of violation of each of these statutes. Diversion of a patient's medications for personal use by a nurse is one of the most serious breaches of

professional and ethical values by a nurse. This alone would justify an order of summary suspension. In this case, there is the added risk that the Respondent has a probable history of opiate addiction which heightens the seriousness of her professional access to prescription opiates. Until all facts are known, including her current addiction situation, the public health, safety and welfare require that her license be summarily suspended. The Respondent has argued that limits might be placed by the Nursing Board upon the Respondent's license such that the Respondent could continue working as a Registered Nurse without access to regulated drugs. The Board is not inclined to enter into such a tailored order until all the facts are known concerning the Respondent's addiction history, her current treatment situation, and potential employment possibilities. At the current time, the Board simply does not have sufficient information to confidently craft such an order.

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: October 13, 2016

Jeanine Carr, RN, Chair of the Board

DATE OF ENTRY: 10/18/16

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:
MELISSA A. KEMPTON
License No. 026.0076136

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)

Docket No. 2016-433

REQUEST FOR SUMMARY SUSPENSION

Board Authority

1. The Vermont Board of Nursing ("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.

Statements of Facts

3. Melissa A. Kempton ("Respondent") of Randolph, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0076136. This license was originally issued on April 7, 2011, and expires on March 31, 2017.
4. At all relevant times Respondent was employed as a Registered Nurse by the staffing agency Medical Solutions, based in Nebraska, and assigned to work at The Pines at Rutland Center for Nursing and Rehabilitation (Facility) in Rutland, Vermont.
5. On July 31, 2016, Respondent documented administration of Norco (hydrocodone/acetaminophen 5-325) to Patient 1 at 0130.
6. Patient 1 later told RN K.S. that Patient 1 did not have pain at 0130 on July 31, 2016.
7. On July 31, 2016, Respondent documented administration of Tramadol 50 mg to Patient 2 at 0300. Respondent documented removal of this medication in the narcotic log at 0200.
8. Patient 2 later told RN K.S. that Patient 2 didn't remember being in pain, asking for pain medication, or receiving pain medication at that time. Patient 2 did remember receiving a nebulizer treatment at that time.

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9. On July 31, 2016, Respondent documented administration of oxycodone 10 mg to Patient 3 at 0045. Respondent signed the medication out on the narcotic log at 0030.
10. Patient 3 later told RN K.S. that Patient 3 did not remember receiving any pain medication that night.
11. On September 20, 2016, Respondent admitted diverting of narcotics from the Facility on at least 2 but not more than 10 occasions.
12. Respondent stated that she diverted Percocet and Vicodin [hydrocodone].
13. Respondent stated she diverted controlled medications to help her with ongoing pain from an oral surgery.
14. Respondent also admitted she had previously been treated with Suboxone for substance abuse. She stopped taking Suboxone one and a half years ago.
15. Respondent's prescription profile in the Vermont Prescription Monitoring System indicated that during 2016, she had numerous prescriptions for narcotics from multiple prescribers. The medications included oxycodone, hydrocodone, and Tylenol with codeine.

Violation One: 26 V.S.A § 1582(a)(2): Diverting or attempting to divert drugs or equipment or supplies for unauthorized use.

16. The State re-alleges and incorporates Paragraphs 3 through 15 above.
17. Registered nurses are prohibited from diverting drugs from their employers. Diversion is defined as taking something for your personal use.
18. Paragraphs 5 through 15 above demonstrate that Respondent diverted narcotics for her personal use.
19. 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 26 V.S.A. § 1582(a)(2).

Violation Two: 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.

20. The State re-alleges and incorporates Paragraphs 3 through 15 above.
21. Registered nurses are required to create and maintain accurate medical records.

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22. Respondent falsely documented administering narcotics to patients on July 31, 2016, when in fact she admits to diverting those controlled drugs.
23. 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 3 V.S.A § 129a(a)(7).

Request for Relief

24. Emergency action is required because Respondent's continued licensure is a significant threat to the health, safety and welfare of the people of the State of Vermont because a registered nurse is prohibited from falsifying medical records and diverting narcotics for his or her personal use.
25. 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), Melissa A. Kempton license number 026.0076136 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 4 day of October, 2016.

STATE OF VERMONT
SECRETARY OF STATE

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