

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

IN RE:	)	(M2016-69)
MELISSA S. KILBURN	)	Docket No. 2016-101
License No. 026.0077390	)	

REINSTATEMENT STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney Rachel Allen, and the Respondent, Melissa S. Kilburn, 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. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Melissa S. Kilburn ("Respondent") of St. Albans, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0077390. This license was originally issued on or about July 18, 2011, and set to expire on or about March 31, 2017.
3. On April 15, 2016, the Board granted the State's request to Summarily Suspend Respondent's license. *See* Attachment A.
4. On June 14, 2016, the Board accepted Respondent's voluntary surrender of her RN License. *See* Attachment B.
5. On September 21, 2016, the Docket Clerk for the Secretary of State's Office of Professional Regulation ("OPR") received Respondent's request for reinstatement.

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.

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89 Main Street
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Montpelier, VT
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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. The Board of Nursing hereby **INDEFINITELY SUSPENDS** Respondent's license.

(1) Obtain an independent evaluation report by a licensed professional specializing in drug and alcohol abuse pre-approved by the Board ("Independent Evaluator") and who has verified receipt of this Order, the results of which must indicate that Respondent does not present a risk to the safety, health or welfare of Respondent's potential patients;

(2) Within **forty-five (45) days** of the effective date of this Order, Respondent must: Submit to the Board the results of a minimum of three (3) random urine analyses, collected in an observed setting; administered by a person or entity that has been pre-approved by the Board; and analyzed by a lab qualified to analyze samples for forensic purposes and pre-approved by the Board, the results of which shall be negative; failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine analysis shall cause that screen to be presumed positive;

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- B. Once Respondent has complied with A(1) and (2) above, Respondent shall petition the Board to reinstate her license.
- C. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.
- D. 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).
- E. 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: 10/3/16

STATE OF VERMONT
SECRETARY OF STATE

By: [Signature]
Rachel Allen
State Prosecuting Attorney

Dated: 9/29/16

MELISSA S. KILBURN
RESPONDENT

By: [Signature]
Melissa S. Kilburn

APPROVED AND SO ORDERED:

Dated: 10/10/16

Date of Entry: 10/10/16

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

STATE OF VERMONT



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

IN RE:

**MELISSA S. KILBURN
License No. 026.0077390**

)
)
)

Docket No. 2016-101

STIPULATED SURRENDER OF LICENSE

NOW COME the State of Vermont, by State Prosecuting Attorney Rachel Allen, and the respondent in this matter, Melissa S. Kilburn, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by licensed nursing assistants pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Stipulated Facts

2. Melissa S. Kilburn ("Respondent") of St. Albans, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0077390. This license was originally issued on or about July 18, 2011, and expires on or about March 31, 2017.
3. During the relevant time period, Respondent was employed as a RN with the University of Vermont Medical Center, Labor and Delivery Unit, located in Burlington, Vermont ("Facility").
4. On or about February 8, 2016, Respondent was cited for Negligent Operation of a Motor Vehicle, in violation of 23 V.S.A. § 1091, and Recklessly Endangering another Person, in violation of 13 V.S.A. § 1025.
5. On or about February 11, 2016, M.S., a RN at the Facility, was alerted to the news of Respondent's February 8, 2016 criminal citation. M.S. discussed this matter with the Respondent. Respondent requested a leave of absence and acknowledged that she could not provide safe patient care at that time. Respondent's union representative later notified M.S. that Respondent was going to Valley Vista, Inpatient Alcohol and Chemical Dependency Services, located in Bradford, Vermont.

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6. On or about February 17, 2016, Respondent was admitted to Valley Vista for the presenting problem of opioid dependency as well as misuse of her prescription Suboxone.
7. On or about March 5, 2016, Respondent left Valley Vista with only a partial completion.
8. At the Facility, Respondent's medication withdrawals and administrations were reviewed and M.S. found a number of irregularities with patients prescribed Hydromorphone and Oxycodone.
9. On or about March 9, 2016, Respondent was interviewed by Investigator John Lewis, Investigator for the Secretary of State's Office of Professional Regulation.
10. Respondent admitted that she had been purchasing Oxycodone thirty (30) milligram tablets off the street and she was using four to seven tablets per day during her most recent relapse.
11. Respondent admitted that she used drugs while working and that she was under the influence of narcotics at work.
12. During the March 9, 2016 interview, Investigator Lewis asked Respondent about the concerns regarding her Hydromorphone and Oxycodone administration. Respondent stated that Hydromorphone was not her drug of choice and "[i] can do a shit more of Oxy than Dilaudid." Respondent denied taking Oxycodone from the Facility and stated, "five milligrams is like a spit in the sand compared to what I was doing."
13. In response to the question of why Respondent made documentation and administrative errors, Respondent stated, "[i] was fucked up and not paying attention."
14. Respondent stated that her medication administration issues were likely a result of her being under the influence of narcotics.
15. Since 2005, Respondent was under a physician's care for a diagnosis of Opiate Use Disorder, Severe, and prescribed Suboxone during that time, with the exception of July 2012 to December 2013.
16. On or about July 18, 2011, Respondent submitted her Registered Nurse Licensure by Examination application to the Secretary of State's Office of Professional Regulation. Respondent answered "no" to the following questions: "[a]re you currently addicted to or in any way dependent on, the use of alcohol or habit forming drugs?", and "[a]re you currently participating in a supervised program or professional assistance program which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances?"

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Violations

17. 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. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - b. 3 V.S.A. § 129a(a)(3) (Failure to comply with provisions of federal or State statutes or rules governing the practice of the profession);
 - c. 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);
 - d. 3 V.S.A § 129a(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 26 V.S.A § 1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use); and
 - f. 26 V.S.A § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public).

Understandings

18. 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.
19. 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.
20. 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.
21. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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22. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
23. 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.
24. 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.
25. Respondent agrees that the Order set forth below may be entered by the Board.

ACCEPTANCE OF SURRENDER

- A. The Board hereby accepts **ACCEPTS** Respondent's **VOLUNTARY SURRENDER** of her Registered Nurse license.
- B. Any future application for licensure shall be subject to the licensing requirements of that particular profession. If a future application for licensure in the State of Vermont is approved, that license shall be **CONDITIONED** pursuant to whatever terms are found to be reasonable at the time of Respondent's application of licensure.
- 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).
- E. 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:

STATE OF VERMONT
SECRETARY OF STATE

Dated: 5/9/16

By: [Signature]
Rachel Allen
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
Office of
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05620-3402

Dated: 5/6/16

MELISSA S. KILBURN
RESPONDENT

By: [Signature]
Melissa S. Kilburn

APPROVED AND SO ORDERED:

Dated: 6/13/16

Date of Entry: 6/14/16

VERMONT BOARD OF NURSING

By: Jeanine Carr
Chairperson

STATE OF VERMONT



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**STATE OF VERMONT
BOARD OF NURSING**

In re: Melissa S. Kilburn
License No. 026.0077390

}
} Docket No. 2016-101 (RN)
}

SUMMARY SUSPENSION ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice-Chair
William G. White, Jr., Public Member
Jennifer Laurent, APRN
Virginia Hudson, RN
John Welch, Jr., Public Member
Douglas Sutton, RN

Appearances:

Prosecuting the case: Rachael Allen, Esq.
Respondent: did not appear

Presiding Officer:

George K. Belcher

**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 April 11, 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 sent to Respondent at her last known address via certified mail dated April 4, 2016. 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 testimony of investigator John Lewis. Scrutiny had been brought upon the Respondent's nursing practice after she had been charged with criminal operation of a motor vehicle in February of 2016. The Respondent had told one of her colleagues at work on February 11, 2016 that she could not provide safe nursing care at that time. As a result, Investigator Lewis interviewed the Respondent on March 9, 2016. During that interview the Respondent admitted to the purchase of illegal Oxycodone and to the use illegal drugs while working as a nurse. She admitted to Investigator Lewis that her work performance was impaired by her drug use while working. She admitted that her medication and documentation errors at work were as a result of her drug use and impairment while at work.
 6. The Respondent further admitted that she was prescribed Suboxone. Her use of Suboxone and her treatment for opiate use was ongoing since 2005. This fact was not disclosed on her nursing license application on July 18, 2011 and, in fact, the application denied addiction or her being involved in treatment for substance abuse.
 7. According to Investigator Lewis, the Respondent had been admitted to in-patient drug treatment at Valley Vista but did not successfully complete her treatment program.
 8. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm and unsafe nursing practice.

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 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: April 11, 2016

Jeanine Carr, RN, Chair of the Board

DATE OF ENTRY:

4/15/16

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 S. KILBURN	)	Docket No. 2016-101
License No. 026.0077390	)	

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.

Statement of Facts

3. Melissa S. Kilburn ("Respondent") of St. Albans, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0077390. This license was originally issued on or about July 18, 2011, and expires on or about March 31, 2017.
4. During the relevant time period, Respondent was employed as a RN with the University of Vermont Medical Center, Labor and Delivery Unit, located in Burlington, Vermont ("Facility").
5. On or about February 8, 2016, Respondent was cited for Negligent Operation of a Motor Vehicle, in violation of 23 V.S.A. § 1091, and Recklessly Endangering another Person, in violation of 13 V.S.A. § 1025.
6. On or about February 11, 2016, M.S., a RN at the Facility, was alerted to the news of Respondent's February 8, 2016 criminal citation. M.S. discussed this matter with the Respondent. Respondent requested a leave of absence and acknowledged that she could not provide safe patient care at that time. Respondent's union representative later notified M.S. that Respondent was going to Valley Vista, Inpatient Alcohol and Chemical Dependency Services, located in Bradford, Vermont.

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7. On or about February 17, 2016, Respondent was admitted to Valley Vista for the presenting problem of opioid dependency as well as misuse of her prescription Suboxone.
8. On or about March 5, 2016, Respondent left Valley Vista with only a partial completion.
9. At the Facility, Respondent's medication withdrawals and administrations were reviewed and M.S. found a number of irregularities with patients prescribed Hydromorphone and Oxycodone.
10. On or about March 9, 2016, Respondent was interviewed by Investigator John Lewis, Investigator for the Secretary of State's Office of Professional Regulation.
11. Respondent admitted that she had been purchasing Oxycodone thirty (30) milligram tablets off the street and she was using four to seven tablets per day during her most recent relapse.
12. Respondent admitted that she used drugs while working and that she was under the influence of narcotics at work.
13. During the March 9, 2016 interview, Investigator Lewis asked Respondent about the concerns regarding her Hydromorphone and Oxycodone administration. Respondent stated that Hydromorphone was not her drug of choice and "[i] can do a shit more of Oxy than Dilaudid." Respondent denied taking Oxycodone from the Facility and stated, "five milligrams is like a spit in the sand compared to what I was doing."
14. In response to the question of why Respondent made documentation and administrative errors, Respondent stated, "[i] was fucked up and not paying attention."
15. Respondent stated that her medication administration issues were likely a result of her being under the influence of narcotics.
16. Since 2005, Respondent was under a physician's care for a diagnosis of Opiate Use Disorder, Severe, and prescribed Suboxone during that time, with the exception of July 2012 to December 2013.
17. On or about July 18, 2011, Respondent submitted her Registered Nurse Licensure by Examination application to the Secretary of State's Office of Professional Regulation. Respondent answered "no" to the following questions: "[a]re you currently addicted to or in any way dependent on, the use of alcohol or habit forming drugs?", and "[a]re you currently participating in a supervised program or professional assistance program which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances?"

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18. Summary suspension is required when a registered nurse is treating patients while impaired.

Request for Relief

19. 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.
20. The above acts and circumstances, alone or in combination, violate:
- a. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - b. 3 V.S.A. § 129a(a)(3) (Failure to comply with provisions of federal or State statutes or rules governing the practice of the profession);
 - c. 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);
 - d. 3 V.S.A § 129a(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 26 V.S.A § 1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use); and
 - f. 26 V.S.A § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), Melissa S. Kilburn's nursing license number 026.0077390 be summarily suspended, pending a hearing on the merits.

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

STATE OF VERMONT



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STATE OF VERMONT
SECRETARY OF STATE

By: 
Rachel Allen
State Prosecuting Attorney

STATE OF VERMONT



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

IN RE:	)	
MELISSA S. KILBURN	)	Docket No. 2016-101
License No. 026.0077390	)	

STIPULATED SURRENDER OF LICENSE

NOW COME the State of Vermont, by State Prosecuting Attorney Rachel Allen, and the respondent in this matter, Melissa S. Kilburn, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Nursing (the "Board") has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by licensed nursing assistants pursuant to 3 V.S.A. §§ 129, 129a; 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Stipulated Facts

2. Melissa S. Kilburn ("Respondent") of St. Albans, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0077390. This license was originally issued on or about July 18, 2011, and expires on or about March 31, 2017.
3. During the relevant time period, Respondent was employed as a RN with the University of Vermont Medical Center, Labor and Delivery Unit, located in Burlington, Vermont ("Facility").
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13. In response to the question of why Respondent made documentation and administrative errors, Respondent stated, "[i] was fucked up and not paying attention."
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15. Since 2005, Respondent was under a physician's care for a diagnosis of Opiate Use Disorder, Severe, and prescribed Suboxone during that time, with the exception of July 2012 to December 2013.
16. On or about July 18, 2011, Respondent submitted her Registered Nurse Licensure by Examination application to the Secretary of State's Office of Professional Regulation. Respondent answered "no" to the following questions: "[a]re you currently addicted to or in any way dependent on, the use of alcohol or habit forming drugs?", and "[a]re you currently participating in a supervised program or professional assistance program which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances?"

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Violations

17. 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. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - b. 3 V.S.A. § 129a(a)(3) (Failure to comply with provisions of federal or State statutes or rules governing the practice of the profession);
 - c. 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);
 - d. 3 V.S.A § 129a(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 26 V.S.A § 1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use); and
 - f. 26 V.S.A § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public).

Understandings

18. 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.
19. 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.
20. 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.
21. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

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3rd Floor
Montpelier, VT
05620-3402

22. Respondent is not under the influence of any drugs or alcohol at the time Respondent signs this Stipulation and Consent Order.
23. 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.
24. 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.
25. Respondent agrees that the Order set forth below may be entered by the Board.

ACCEPTANCE OF SURRENDER

- A. The Board hereby accepts **ACCEPTS** Respondent's **VOLUNTARY SURRENDER** of her Registered Nurse license.
- B. Any future application for licensure shall be subject to the licensing requirements of that particular profession. If a future application for licensure in the State of Vermont is approved, that license shall be **CONDITIONED** pursuant to whatever terms are found to be reasonable at the time of Respondent's application of licensure.
- 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).
- E. 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:

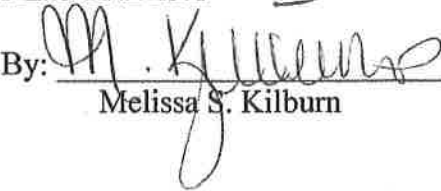
STATE OF VERMONT
SECRETARY OF STATE

Dated: 5/9/16

By: 
Rachel Allen
State Prosecuting Attorney

Dated: 5/6/16

MELISSA S. KILBURN
RESPONDENT

By: 
Melissa S. Kilburn

STATE OF VERMONT



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

APPROVED AND SO ORDERED:

Dated: 6/13/16

Date of Entry: 6/14/16

VERMONT BOARD OF NURSING

By: Jeanine Cerr
Chairperson

STATE OF VERMONT



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

**STATE OF VERMONT
BOARD OF NURSING**

In re: Melissa S. Kilburn
License No. 026.0077390

}
} Docket No. 2016-101 (RN)
}

SUMMARY SUSPENSION ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice-Chair
William G. White, Jr., Public Member
Jennifer Laurent, APRN
Virginia Hudson, RN
John Welch, Jr., Public Member
Douglas Sutton, RN

Appearances:

Prosecuting the case: Rachael Allen, Esq.
Respondent: did not appear

Presiding Officer:

George K. Belcher

**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 April 11, 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 sent to Respondent at her last known address via certified mail dated April 4, 2016. 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 testimony of investigator John Lewis. Scrutiny had been brought upon the Respondent's nursing practice after she had been charged with criminal operation of a motor vehicle in February of 2016. The Respondent had told one of her colleagues at work on February 11, 2016 that she could not provide safe nursing care at that time. As a result, Investigator Lewis interviewed the Respondent on March 9, 2016. During that interview the Respondent admitted to the purchase of illegal Oxycodone and to the use illegal drugs while working as a nurse. She admitted to Investigator Lewis that her work performance was impaired by her drug use while working. She admitted that her medication and documentation errors at work were as a result of her drug use and impairment while at work.
 6. The Respondent further admitted that she was prescribed Suboxone. Her use of Suboxone and her treatment for opiate use was ongoing since 2005. This fact was not disclosed on her nursing license application on July 18, 2011 and, in fact, the application denied addiction or her being involved in treatment for substance abuse.
 7. According to Investigator Lewis, the Respondent had been admitted to in-patient drug treatment at Valley Vista but did not successfully complete her treatment program.
 8. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm and unsafe nursing practice.

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 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
Jeanine Carr, RN, Chair of the Board

Date: April 11, 2016

DATE OF ENTRY: 4/15/16

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 S. KILBURN
License No. 026.0077390

)
)
)

Docket No. 2016-101

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.

Statement of Facts

3. Melissa S. Kilburn ("Respondent") of St. Albans, Vermont, is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0077390. This license was originally issued on or about July 18, 2011, and expires on or about March 31, 2017.
4. During the relevant time period, Respondent was employed as a RN with the University of Vermont Medical Center, Labor and Delivery Unit, located in Burlington, Vermont ("Facility").
5. On or about February 8, 2016, Respondent was cited for Negligent Operation of a Motor Vehicle, in violation of 23 V.S.A. § 1091, and Recklessly Endangering another Person, in violation of 13 V.S.A. § 1025.
6. On or about February 11, 2016, M.S., a RN at the Facility, was alerted to the news of Respondent's February 8, 2016 criminal citation. M.S. discussed this matter with the Respondent. Respondent requested a leave of absence and acknowledged that she could not provide safe patient care at that time. Respondent's union representative later notified M.S. that Respondent was going to Valley Vista, Inpatient Alcohol and Chemical Dependency Services, located in Bradford, Vermont.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
89 Main Street
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7. On or about February 17, 2016, Respondent was admitted to Valley Vista for the presenting problem of opioid dependency as well as misuse of her prescription Suboxone.
8. On or about March 5, 2016, Respondent left Valley Vista with only a partial completion.
9. At the Facility, Respondent's medication withdrawals and administrations were reviewed and M.S. found a number of irregularities with patients prescribed Hydromorphone and Oxycodone.
10. On or about March 9, 2016, Respondent was interviewed by Investigator John Lewis, Investigator for the Secretary of State's Office of Professional Regulation.
11. Respondent admitted that she had been purchasing Oxycodone thirty (30) milligram tablets off the street and she was using four to seven tablets per day during her most recent relapse.
12. Respondent admitted that she used drugs while working and that she was under the influence of narcotics at work.
13. During the March 9, 2016 interview, Investigator Lewis asked Respondent about the concerns regarding her Hydromorphone and Oxycodone administration. Respondent stated that Hydromorphone was not her drug of choice and "[i] can do a shit more of Oxy than Dilaudid." Respondent denied taking Oxycodone from the Facility and stated, "five milligrams is like a spit in the sand compared to what I was doing."
14. In response to the question of why Respondent made documentation and administrative errors, Respondent stated, "[i] was fucked up and not paying attention."
15. Respondent stated that her medication administration issues were likely a result of her being under the influence of narcotics.
16. Since 2005, Respondent was under a physician's care for a diagnosis of Opiate Use Disorder, Severe, and prescribed Suboxone during that time, with the exception of July 2012 to December 2013.
17. On or about July 18, 2011, Respondent submitted her Registered Nurse Licensure by Examination application to the Secretary of State's Office of Professional Regulation. Respondent answered "no" to the following questions: "[a]re you currently addicted to or in any way dependent on, the use of alcohol or habit forming drugs?", and "[a]re you currently participating in a supervised program or professional assistance program which monitors you in order to assure that you are not engaging in the use of alcohol or controlled substances?"

STATE OF VERMONT



Prosecuting Attorney
Office of
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89 Main Street
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18. Summary suspension is required when a registered nurse is treating patients while impaired.

Request for Relief

19. 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.
20. The above acts and circumstances, alone or in combination, violate:
- a. 3 V.S.A. § 129a(a)(1) (Fraudulent or deceptive procurement or use of a license);
 - b. 3 V.S.A. § 129a(a)(3) (Failure to comply with provisions of federal or State statutes or rules governing the practice of the profession);
 - c. 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);
 - d. 3 V.S.A § 129a(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 26 V.S.A § 1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use); and
 - f. 26 V.S.A § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), Melissa S. Kilburn's nursing license number 026.0077390 be summarily suspended, pending a hearing on the merits.

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

STATE OF VERMONT
SECRETARY OF STATE

STATE OF VERMONT



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

By: 
Rachel Allen
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
Office of
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89 Main Street
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**STATE OF VERMONT
BOARD OF NURSING**

In re: Melissa S. Kilburn
License No. 026.0077390

}
} Docket No. 2016-101 (RN)
}

SUMMARY SUSPENSION ORDER

Participating Board Members:

Jeanine Carr, RN, Chair
Ellen Watson, APRN, Vice-Chair
William G. White, Jr., Public Member
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John Welch, Jr., Public Member
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Appearances:

Prosecuting the case: Rachael Allen, Esq.
Respondent: did not appear

Presiding Officer:

George K. Belcher

**Summary Suspension Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
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This matter came before the Board of Nursing on a Request for a Summary Suspension. The hearing was held on April 11, 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.
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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.

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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
Jeanine Carr, RN, Chair of the Board

Date: April 11, 2016

DATE OF ENTRY: 4/15/16

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

IN RE:

MELISSA S. KILBURN

License No. 026.0077390

)

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)

Docket No. 2016-101

REQUEST FOR SUMMARY SUSPENSION

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16. Since 2005, Respondent was under a physician's care for a diagnosis of Opiate Use Disorder, Severe, and prescribed Suboxone during that time, with the exception of July 2012 to December 2013.
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 - d. 3 V.S.A § 129a(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 26 V.S.A § 1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use); and
 - f. 26 V.S.A § 1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), Melissa S. Kilburn's nursing license number 026.0077390 be summarily suspended, pending a hearing on the merits.

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

STATE OF VERMONT
SECRETARY OF STATE

STATE OF VERMONT



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

By:



Rachel Allen

State Prosecuting Attorney

STATE OF VERMONT



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