

OFFICE OF PROFESSIONAL REGULATION
VERMONT STATE BOARD OF NURSING

IN RE: Ann L. Lupa)
 Case File No. NU64-0304) DEFAULT ORDER
 License No. 26-29250)

Introduction

The Board of Nursing held a default hearing in the above matter on August 9, 2004 at 81 River Street in Montpelier, Vermont. Board members Susan Farrell, Sandra Norton, Ellen Leff, Donarae Metcalf, Pat Rock and *ad hoc* member Margaret Luce participated in the decision. State Prosecuting Attorney Edward Adrian appeared for the State. Ann Lupa ("the Respondent") did not attend.

Findings of Fact

1. The Respondent was sent notice of the Charges against her to her last known address by certified mail and first class mail on May 19, 2004.
2. The certified mailing was returned to the Office of Professional Regulation, marked "unclaimed."
3. Notice of the default hearing was mailed to the same address by certified and regular mail on July 16, 2004.
4. The mailings were sent to the same address as was a previous Summary Suspension Order issued by the Board in April 2004. That certified mailing was also returned marked "unclaimed." None of the first class mailings were returned.
5. After taking notice of its own file, the Board found the Respondent to be in default. The allegations contained in the State's Specification of Charges dated May 14, 2004 (copy attached) are therefore treated as the facts on which the Board's order is based.

Conclusions of Law

The Respondent has received adequate notice of the charges against her as indicated by the Board's file. Because the Respondent has failed to answer the charges against her, the State's factual allegations are treated as if proved. Accordingly, the Board finds, in the default

hearing held pursuant to 3 V.S.A. §809(d), that the Respondent 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, the license of the Respondent is hereby REVOKED.

Appeal Rights

This is a final administrative determination by the Vermont State Board of Nursing. You may appeal by sending a notice of appeal in writing to the Director of the Office of Professional Regulation within 30 days of the date of entry of this order. If you wish to request a stay of the Board's decision, please refer to the attached stay instructions.

By: Susan Farrell
Susan Farrell, RN
Chair

Date: 8.17.04

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/23/04

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

IN RE:

ANN L. LUPA, R.N.

License No. 026-0029250

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DOCKET No. NU64-0304

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Ann L. Lupa, R.N.:

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 and; the rules of the Board and the Vermont Office of Professional Regulation.

Statement of Facts

2. Ann L. Lupa (the "Respondent") of Oswego, New York is a registered nurse holding temporary license number 026-0029250 issued by the State of Vermont. This license was originally issued on or about February 20, 2004 and is set to expire on May 20, 2004.
3. The Respondent's license is currently suspended pursuant to a Summary Suspension Order entered by the Board of Nursing on April 13, 2004 which was based upon the facts below.
4. At all relevant times, the Respondent was practicing as a registered nurse and worked at the Rutland Regional Medical Center (the "Hospital") located in Rutland, Vermont. On information and belief, the Respondent was terminated from employment on March 12, 2004 for diverting medications from the Hospital.
5. Between March 8, 2004 and March 11, 2004, it was suspected by Hospital personnel that the Respondent was either having problems with the Omnicell Drug Dispensing machine or was diverting drugs for her own use. This was based on the fact that the Respondent was taking 250 microgram vials of Fentanyl for patients that only needed 25 micrograms and 100 microgram vials were available.
6. Nurse Katherine LaMontagne confronted the Respondent about the discrepancies in her usage of the Omnicell machine on March 12, 2004. The Respondent stated that she had been administering a patient 50 microgram doses of the Fentanyl instead of the 25 microgram doses that had been prescribed.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

7. Based on this information, Ms. LaMontagne asked the Respondents to empty her pockets. The Respondent was found to have a 250 microgram vial of Fentanyl in her pocket. The Respondent was not authorized to have this vial at the time she was searched.
8. Based on this evidence and going by the Hospital's policy, the Respondent's locker was searched by Hospital personnel. This search revealed that the Respondent had stored in her locker Fentanyl, Zofran, Lorazepam, Ketorolac, empty ampules of Fentanyl, needles and syringes, Lipro and Detrol LA. Everything except the Lipro and Detrol was identified as Hospital property that the Respondent did not have the right to possess.
9. At all relevant times, the Respondent was sharing a hotel room with her husband Michael Hoyt. Mr. Hoyt is currently on probation in the State of New York for the felony conviction of Sale of a Controlled Substance. A search of the Respondent's belongings in the hotel room revealed a large ziplock bag of the Respondent's containing ketosticks, needles, a rubber constriction/tourniquet, partially used vial of sodium chloride and Lorazepam
10. The Respondent has been cited to appear on August 19, 2004, at the Rutland District Court on the offenses of Petit Larceny and Possession of a Regulated Drug.

Charges

11. The above acts and circumstances, alone or in combination, violate: 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); 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); and Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

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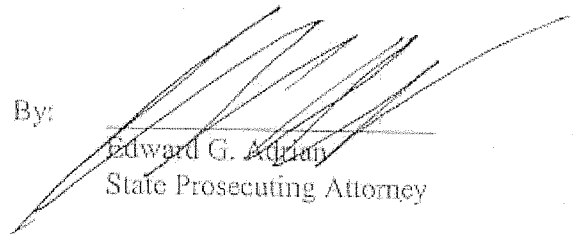
Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

WHEREFORE, the license of Ann L. Lupa should be revoked, suspended, reprimanded, conditioned or otherwise disciplined.

DATED at Montpelier, Vermont this 14th day of May, 2004.

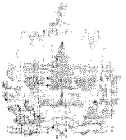
STATE OF VERMONT
SECRETARY OF STATE

By:


Edward G. Adelman
State Prosecuting Attorney

nu.lupa.soc

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

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STATE OF VERMONT
BOARD OF NURSING

In re: Ann L. Lupa
License No. 26-29250

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Docket No. NU64-0304

SUMMARY SUSPENSION ORDER

On April 12, 2004, this case came before the Board of Nursing for a hearing on the State's request for summary suspension.

Based upon the evidence presented at the hearing, the Board finds that there is sufficient evidence to establish to the necessary degree that the public health, safety, or welfare imperatively require emergency action against the Respondent's license.

Pursuant to 3 V.S.A. § 814(c), Respondent Ann L. Lupa's nursing license is SUMMARILY SUSPENDED until a hearing on charges has been held and determined, or other resolution of this case.

BOARD OF NURSING

By: *Sandra Rice*
Chair

Dated: April 12, 2004

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 4/13/04

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

IN RE: ANN L. LUPA, RN

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DOCKET No. NU64-0304

License No. 026-0029250

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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 and; the rules of the Board and the Vermont 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. Ann L. Lupa (the "Respondent") of Oswego, New York is a registered nurse holding temporary license number 026-0029250 issued by the State of Vermont. This license was originally issued on or about February 20, 2004 and is set to expire on May 20, 2004.
4. At all relevant times the Respondent was practicing as a registered nurse and worked at the Rutland Regional Medical Center (the "Hospital") located in Rutland, Vermont. On information and belief, the Respondent was terminated from employment on March 12, 2004 for diverting medications from the Hospital.
5. Between March 8, 2004 and March 11, 2004 it was suspected by Hospital personnel that the Respondent was either having problems with the Omnicell Drug Dispensing machine or was diverting drugs for her own use. This was based on the fact that the Respondent was taking 250 microgram vials of Fentanyl for patients that only needed 25 micrograms and 100 microgram vials were available.
6. Nurse Katherine LaMontagne confronted the Respondent about the discrepancies in her usage of the Omnicell machine on March 12, 2004. The Respondent stated that she had been administering a patient 50 microgram doses of the Fentanyl instead of the 25 microgram doses that had been prescribed.
7. Based on this information, Ms. LaMontagne asked the Respondents to empty her pockets. The Respondent was found to have a 250 microgram vial of Fentanyl in her pocket. The Respondent was not authorized to have this vial at the time she was searched.

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Prosecuting Attorney
Office of
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8. Based on this evidence and going by the Hospital's policy, the Respondent's locker was searched by Hospital personnel. This search revealed that the Respondent had stored in her locker Fentanyl, Zofran, Lorazepam, Ketorolac, empty ampules of Fentanyl, needles and syringes, Lipro and Detrol LA. Everything except the Lipro and Detrol was identified as Hospital property that the Respondent did not have the right to possess.
9. At all relevant times the Respondent was sharing a hotel room with her husband Michael Hoyt. Mr. Hoyt is currently on probation in the State of New York for the felony conviction of Sale of a Controlled Substance. A search of the Respondent's belongings in the hotel room revealed a large ziplock bag of the Respondent's containing ketosticks, needles, a rubber constriction/tourniquet, partially used vial of sodium chloride and Lorazepam
8. The Respondent has been cited to appear on August 19, 2004, at the Rutland District Court on the offenses of Petit Larceny and Possession of a Regulated Drug.

Request for Relief

9. 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.
10. The above acts and circumstances, alone or in combination, violate: 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); 3 V.S.A. §§ 129a(b)(1)(failure to practice competently by any reason of any cause on a single occasion or on multiple occasions . . . performance of unsafe or unacceptable patient care); 26 V.S.A. § 1582(a)(3)(is unable to practice nursing competently by reason of any cause); 26 V.S.A. § 1582(a)(5) (is addicted to the use of habit forming drugs); 26 V.S.A. § 1582(a)(7)(engages in conduct of a character likely to deceive, defraud or harm the public); Vermont Board of Nursing Administrative Rule (the "Rules") Chapter 4, Rule IV, II, B, 1; (performance of unsafe or unacceptable patient care); and Rule Chapter 4, Rule IV, II, D. 4 (diverting supplies, equipment, or drugs for personal or other unauthorized use).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814, the Respondent's nursing license number 026-0029250 be summarily suspended.

DATED at Montpelier, Vermont this 30th day of March, 2004.

STATE OF VERMONT



Prosecuting Attorney
Office of
Professional Regulation
Montpelier, VT 05602

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Edward G. Adrian
State Prosecuting Attorney