

**STATE OF VERMONT
BOARD OF NURSING**

In re: Jennifer N. Merfeld
License No. 026-69788

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} Docket No. 2014-610(RN)

Appearances:

Prosecutor: S. Lauren Hibbert
Respondent: Did not appear

Presiding Officer: Larry S. Novins

DEFAULT ORDER

The Board of Nursing held a hearing on the above matter on February 9, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. Ms. Merfeld did not attend and was not represented by counsel.

Findings of Fact

1. Ms. Merfeld is licensed as a registered nurse. Her license was summarily suspended on December 8, 2014. She is 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 November 18, 2014 Ms. Merfeld was sent a Notice of Charges in this matter by certified mail and first class mail to her last known address. A copy of the Specification of Charges is attached to this Default Order.
3. 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.
4. Licensees are required to notify the Board of any change of address within 30 days. 3 V.S.A. § 129a(a)(14).
5. Stamps on the envelope indicate the notice of charges was undeliverable. The Post Office was unable to forward the notice.
6. Ms. Merfeld has not filed an answer to the charges.
7. On December 29, 2014 notice of the Default Hearing scheduled for this date was mailed to Ms. Merfeld at that same address by certified mail and first class mail. The notice was undeliverable as addressed and could not be forwarded.
8. Ms. Merfeld has still not answered the charges.
9. Upon hearing the Prosecution's presentation and taking notice of its own file, the Board finds Ms. Merfeld to be in Default. The allegations contained in the 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

Ms. Merfeld has received adequate notice of the charges in this matter as indicated by the Board's file and the Prosecution's presentation. Because Ms. Merfeld has failed to answer the charges, the factual allegations in the Specification of Charges 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 Ms. Merfeld has engaged in the unprofessional conduct alleged in the Specification of Charges.

Order

In accordance with the above Findings of Fact and Conclusions of Law, Ms. Merfeld's license is hereby **indefinitely suspended** effective as of the date of the hearing. Should Ms. Merfeld apply for reinstatement, the Board at that time will determine whether any conditions can permit him/her 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, 89 Main St., 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: February 9, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 2/10/15

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

IN RE:

Jennifer N. Merfeld

License No. 026.0069788

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Docket No. 2014-610

SPECIFICATION OF CHARGES

NOW COMES the State of Vermont and makes the following Charges against the Respondent, Jennifer N. Merfeld:

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; 26 V.S.A. §1584; 26 V.S.A. §1595; 26 V.S.A. §1600; 26 V.S.A. §1615 the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Jennifer N. Merfeld (the "Respondent") of Ticonderoga, New York is licensed by the State of Vermont under license number 026.0069788. This license was originally issued on or about July 30, 2010 and expires on or about March 31, 2015.
3. During the relevant time period, Respondent was employed at Porter Hospital in Middlebury, Vermont.
4. On or about September 16, 2014, Respondent was seen removing Dilaudid from Pyxis for a patient who was not assigned to her and going directly into the staff bathroom. When her supervisor reviewed Respondent's narcotic withdrawal history it showed that she removed seven Dilaudid syringes on September 16, 2014 including for patients who were not prescribed Dilaudid. When confronted by her supervisor, R.P., Respondent stated "I am not going to beat around the bush, I've been taking it, I need help." Respondent gave R.P. an unused syringe that she had put in her bag. When R.P. asked Respondent where the remaining doses were the Respondent told her that she "injected them."

Charges

STATE OF VERMONT



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

5. 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)(3) (Failing to comply with provisions of federal or state statutes or rules governing the practice of the profession);
- b. 3 V.S.A §129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
- c. 3 V.S.A §129a(b)(1) (Performance of unsafe or unacceptable patient or client care);
- d. 3 V.S.A §129a(b)(2) (Failure to conform to the essential standards of acceptable and prevailing practice);
- e. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) incorporating ABRN 11.2(c);
- f. 26 V.S.A §1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);
- g. 26 V.S.A §1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) incorporating ARBN 11.2(d)(4).

Relief Requested

WHEREFORE, the license of Jennifer N. Merfeld should be revoked, suspended, reprimanded, conditioned, or otherwise disciplined.

DATED at Montpelier, Vermont this 17 day of November, 2014.

STATE OF VERMONT
SECRETARY OF STATE

By: S. Lauren Hibbert
S. Lauren Hibbert
State Prosecuting Attorney

STATE OF VERMONT



Prosecuting Attorney
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**STATE OF VERMONT
BOARD OF NURSING**

In re: Jennifer N. Merfeld
License No. 026-69788

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} Docket No. 2014-610(RN)
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**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: S. Lauren Hibbert
Respondent: did not appear

Presiding Officer: Colin Benjamin

Background

This matter came before the Board of Nursing on a Request for a Summary Suspension. The hearing was held on December 8, 2014 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. Ms. Merfeld 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. Ms. Merfeld is a licensed registered 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 prosecutor has filed a "Request for Summary Suspension." A copy of the Request is attached to this Decision and Order. The Request alleges that Ms. Merfeld diverted drugs and was working while under the influence of drugs.
The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency action. Notice of this hearing was sent to Ms. Merfeld at her last known address via certified mail dated November 18, 2014. The notice was returned marked, "Not deliverable as addressed."
3. The Board finds for purposes of this hearing that Ms. Merfeld diverted Dilaudid for her own use. She admitted the diversion and use to her supervisor.

4. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree.
5. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent Ms. Merfeld from practicing while impaired and causing patient harm. 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 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 Ms. Merfeld'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 Ms. Merfeld 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 Ms. Merfeld 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**. Ms. Merfeld'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, 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.

To request a stay of the Board's decision, please refer to the attached stay instructions.

Vermont Board of Nursing

By: Jeanine Carr
Jeanine Carr, RN, Chair

Date: December 8, 2014

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 12/16/14

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

IN RE:)
Jennifer N. Merfeld)
License No. 026.0069788)

Docket No. 2014-610

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. Jennifer N. Merfeld (the "Respondent") of Ticonderoga, New York is licensed by the State of Vermont under license number 026.0069788. This license was originally issued on or about July 30, 2010 and expires on or about March 31, 2015.
4. During the relevant time period, Respondent was employed at Porter Hospital in Middlebury, Vermont.
5. On or about September 16, 2014, Respondent was seen removing Dilaudid from Pyxis for a patient who was not assigned to her and going directly into the staff bathroom. When her supervisor reviewed Respondent's narcotic withdrawal history it showed that she removed seven Dilaudid syringes on September 16, 2014 including for patients who were not prescribed Dilaudid. When confronted by her supervisor, R.P., Respondent stated "I am not going to beat around the bush, I've been taking it, I need help." Respondent gave R.P. an unused syringe that she had put in her bag. When R.P. asked Respondent where the remaining doses were the Respondent told her that she "injected them."

Request for Relief

6. 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.

STATE OF VERMONT



Prosecuting Attorney
Office of
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7. The above acts and circumstances, alone or in combination, violate:
- a. 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);
 - b. 3 V.S.A §129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
 - c. 3 V.S.A §129a(b)(1) (Performance of unsafe or unacceptable patient or client care);
 - d. 3 V.S.A §129a(b)(2) (Failure to conform to the essential standards of acceptable and prevailing practice);
 - e. 26 V.S.A. § 1582(a)(3) (Is unable to practice nursing competently by reason of any cause) incorporating ARBN 11.2(c);
 - f. 26 V.S.A §1582(a)(5) (Is habitually intemperate or is addicted to the use of habit-forming drugs);
 - g. 26 V.S.A §1582(a)(7) (Engages in conduct of a character likely to deceive, defraud, or harm the public) incorporating ARBN 11.2(d)(4).

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 026.0069788 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 12 day of November, 2014.

STATE OF VERMONT
SECRETARY OF STATE

By: S. Lauren Hibbert

S. Lauren Hibbert
State Prosecuting Attorney

STATE OF VERMONT



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