

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

IN RE:
THOMAS N. NJUGUNA
License No. 025.0068650

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Docket No. 2012-247

STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through State Prosecuting Attorney Gabriel M. Gilman, and the respondent, Thomas N. Njuguna, by and through Attorney Richard C. Bothfeld, 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. § 1582; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation.

Statement of Facts

2. Thomas N. Njuguna ("Respondent") of Burlington, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0068650. This license was originally issued on or about September 7, 2010 and expires on or about January 31, 2014. On October 8, 2012, the Board summarily suspended the license pending further proceedings.
3. At all times relevant, Respondent was employed as a Licensed Practical Nurse by Correct Care Solutions and worked at the Chittenden Regional Correctional Facility (the "Facility"), in South Burlington, Vermont.
4. On or about November 9, 2011, in the course of a medical visit, Respondent made inappropriate sexual contact with a female patient incarcerated at the Facility.
5. On February 8, 2013, in the Superior Court of Vermont, Chittenden Criminal Division, pursuant to a plea agreement, Respondent was convicted of one count of sexual exploitation of an inmate, a felony violation of 13 V.S.A. § 3257. As specified in the Information admitted by Respondent:

Thomas N. Njuguna, in this Territorial Unit, in the County of Chittenden, at South Burlington, on or about November 9, 2011, being a correctional employee,

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contactor, or other person providing services to offenders on behalf of the department of corrections, engaged in a sexual act with a person who he knew was confined to a correctional facility, to wit, H.C., by inserting his finger into H.C.'s genital opening through her clothing, in violation of 13 V.S.A. §3257(a)(1).

Pursuant to the same agreement, Respondent also was convicted of one count of engaging in prohibited acts, a violation of 13 V.S.A. § 2632. As specified in the Information admitted by Respondent:

Thomas N. Njuguna, in this Territorial Unit, in the County of Chittenden, at South Burlington, on or about November 9, 2011, engaged in lewdness, to wit, by having contact between his hand and H.C.'s genital area outside of her clothing, in violation of 13 V.S.A. §2632(a)(8).

6. Respondent's sentence on the former conviction is deferred for a probationary period of three years and may be subject to expunction upon successful completion of probation; Respondent's sentence on the latter conviction is not deferred and will remain a conviction of record. Among the terms of Respondent's Deferred Sentence and Probation Order is a requirement that Respondent "shall not be employed in the nursing field unless approved by the Office of Professional Regulation."
7. The criminal acts described above are related to the practice of nursing and occurred during the practice of nursing.

Violations

8. 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)(12) (Has committed any sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient, surrogates, or key third parties);
 - 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); and

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- d. 3 V.S.A. § 129a(a)(10) (Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession.)

Understandings

9. Respondent understands that the Board of Nursing 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.
10. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
11. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
12. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
13. 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.
14. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
15. Respondent understands and agrees that this Stipulation and Consent Order shall survive any expunction of public records pursuant to 13 V.S.A. § 7041 or his deferred sentence agreement.
16. Respondent agrees to share with the Office of Professional Regulation audio-recorded depositions taken in relation to the criminal proceeding described above; agrees that these depositions may be preserved and introduced into evidence in relation to any petition for reinstatement he may file with the Board; and agrees that the Office of Professional Regulation's licensing files, including those related to the investigation of the charge under 13 V.S.A. § 3257 and the affidavit of probable cause in that matter, shall survive any expunction of public records pursuant to 13 V.S.A. § 7041.
17. Respondent agrees that the Order set forth below may be entered by the Board.

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CONSENT ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. The Board of Nursing hereby **INDEFINITELY SUSPENDS** Respondent's license.
- B. At such time as Respondent has completed rehabilitative counseling as required by the Vermont Probation Department, Respondent may petition the Board for the conditional reinstatement of his license pursuant to ARBN 11.4. The State may file opposition to the petition or present evidence relative to the petition. Respondent shall bear the burden of demonstrating that a set of license conditions exists that would enable him to return to nursing practice while adequately protecting the public health, safety and welfare, and the integrity of the nursing professions.
- C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing 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:

STATE OF VERMONT
SECRETARY OF STATE

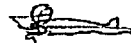
Dated: 4/3/12

By: 

Gabriel Gilman
State Prosecuting Attorney

THOMAS N. NJUGUNA
RESPONDENT

Dated: 4/2/2013

By: 

Thomas N. Njuguna

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APPROVED AS TO FORM:

Dated: 4/2/17

ATTORNEY FOR RESPONDENT

By: [Signature]
Richard C. Bothfeld, Esq.

APPROVED AND SO ORDERED:

Dated: 4/8/13
Date of Entry: 4/8/13

VERMONT BOARD OF NURSING

By: [Signature]
Chairperson

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**STATE OF VERMONT
BOARD OF NURSING**

In re: Thomas N. Njuguna
License No. 025-68650

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Docket No.2012-247 (LPN)

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

for Petitioner, State of Vermont: Gabriel Gilman
for Respondent: not present for hearing

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. Njuguna 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. Njuguna 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. Njuguna engaged in improper sexual activity with a patient in November, 2011, that he subsequently lied about his past employment to avoid disclosure of the accusations against him at his previous place of employment. The State alleges that Mr. Njuguna was charged with a felony and that Mr. Njuguna was arraigned and released on conditions of release none of which prohibit him from practicing nursing.

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. Njuguna at his last known address via certified mail dated October 3, 2012.
5. The Board finds for purposes of this hearing that Mr. Njuguna did engage in improper sexual activity while working as a nurse and that he lied about his past in an attempt to secure subsequent employment. He has displayed dishonesty regarding his qualifications to practice in a manner which indicates he is a continuing danger to the public.
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 further improper conduct and dishonesty regarding his nursing practice. If summary suspension is not ordered, the Board believes that harm to the public and patients 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. Njuguna'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. Njuguna 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. Njuguna 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. Njuguna'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).

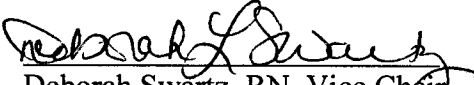
APPEAL RIGHTS

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: 
Deborah Swartz, RN, 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:

THOMAS N. NJUGUNA

License No. 025.0068650

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Docket No. 2012-247

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. Thomas N. Njuguna ("Respondent") of Burlington, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0068650. This license was originally issued on or about September 7, 2010 and expires on or about January 31, 2014.
4. At all times relevant, Respondent was employed as a Licensed Practical Nurse by Correct Care Solutions and worked at the Chittenden Regional Correctional Facility (the "Facility"), in South Burlington, Vermont.
5. On or about November 9, 2011, Respondent approached H.C., an inmate at the Facility, and told her he needed to conduct a routine examination prior to H.C.'s transfer to another facility. Respondent escorted H.C. and A.K., another inmate, to the nurse's office for the examination.
6. Respondent first performed an examination of A.K. in the front office of the nurse's office. Respondent then brought H.C. into the front office and took her blood pressure. Respondent then took H.C. into the exam room, off of the front office, and closed the door.
7. While in the exam room, Respondent began kissing H.C. on her lips and neck. Respondent whispered to H.C., "I love you baby." Respondent then put his hand

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down H.C.'s pants and told her to spread her legs a little. H.C. told Respondent that she believed they would get caught and that she did not want to engage in sexual activity with him. Respondent inserted his finger inside H.C.'s vagina. H.C. stated this happened for a short period of time and Respondent continued to kiss her neck.

8. Respondent then took his hand out of H.C.'s pants and asked her to perform oral sex on him. H.C. told Respondent that she did not want to and eventually convinced him to stop. At that point, they both walked out of the exam room and H.C. sat at the nurse's desk in the front office. During this time, Respondent gave H.C. his phone number and asked that she call him.
9. On or about April 10, 2012, during an interview with Detective Sergeant Lance Burnham of the Vermont State Police, Respondent stated that he did meet with H.C. in the nurse's office and then took her into a private office. Respondent stated that H.C. then started to kiss him. Respondent stated that he did kiss H.C. in return and rubbed his hands on her body. Respondent stated that he rubbed his fingers on H.C.'s vagina over her clothes, but could not remember inserting his finger inside H.C.'s vagina. Respondent stated H.C. left him a note giving him her address so he could reach her once she transferred.
10. On May 24, 2012, Respondent was arraigned in the Superior Court of Vermont, Chittenden Criminal Division, on one count of Sexual Assault of a Confined Inmate, a felony violation of 13 V.S.A. § 3257(a)(1). The Information in the matter alleged that Respondent, "being a correctional employee, contractor, or other person providing services to offenders on behalf of the department of corrections, engaged in a sexual act with a person who he knew was confined to a correctional facility, to wit, H.C., by inserting his finger into H.C.'s genital opening, in violation of 13 V.S.A. § 3257(a)(1)."
11. At arraignment, the Court found probable cause for the described felony, which is now pending trial. The Court released Respondent on conditions. Those conditions do not prohibit the Respondent from practicing nursing. Even if Criminal Division conditions were to prohibit nursing practice, such a restriction would not be enforceable by nursing employers, who have no common and available means to check applicants' conditions of pre-trial release.
12. On October 2, 2012, Board staff received from a potential nursing employer of Respondent, in relation to a new, mandatory report of unprofessional conduct, a job application completed by Respondent and dated May 15, 2012. The application required that Respondent name his past employers, their addresses, phone numbers, dates of employ, and reason for leaving. Respondent omitted his employment with Correct Care Solutions. Respondent signed an agreement at the end of the application: "I certify that all information on this application and any other material provided by me is true and complete."

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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);
 - b. 26 V.S.A. § 1582(a)(12) (Has committed any sexual misconduct that exploits the provider-patient relationship, including sexual contact with a patient, surrogates, or key third parties);
 - 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); and
 - d. 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 025.0068650, pending further proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

DATED at Montpelier, Vermont this 2nd day of October, 2012.

STATE OF VERMONT
SECRETARY OF STATE

By: _____

Gabriel Gilman
State Prosecuting Attorney

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