

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

In re: David McMonigle
License No. 026.0139381

}
} Docket No. 2019-167
}

ORDER GRANTING REQUEST FOR SUMMARY SUSPENSION

Participating Board Members:

Ellen Watson, APRN, Chair
Deborah Swartz, RN,
Luana Tredwell, LPN
Wendy Thurston, RN
Kelly Sinclair, LNA
Krystal Bernier, LPN
Daniel Coane, public member
William G. White, Jr., public member

Appearances:

Prosecuting the case: Elizabeth St. James, Esq.
Respondent: was not present or represented

Presiding Officer:

George K. Belcher

Exhibits:

State Exhibit 1: Order of Temporary Suspension and Notice of Hearing
from Pennsylvania State Board of Nursing dated August 8, 2019
with petition and Exhibits A and B

**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 November 4, 2019, at the Office of Professional Regulation in Montpelier, Vermont.

Findings of Fact

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

1. The Respondent is subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 26 V.S.A. Chapter 28, the Administrative Rules of the Board of Nursing, and the Rules of the Office of Professional Regulation. 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." The Respondent was sent a notice of the hearing on October 23, 2019 to the Respondent's address on file with the Office of Professional Regulation by certified mail and ordinary mail. No evidence of receipt of the notice of hearing was on file with the Office of Professional Regulation.
3. The Respondent is licensed in Vermont as a Registered Nurse and was licensed in Pennsylvania under that state's license number RN683852.
4. On August 8, 2019 the Pennsylvania Board of Nursing issued an Order of Temporary Suspension of Respondent's license for diversion of drugs from the Lancaster General Hospital as well as possession of drugs and supplies from unknown sources. (State Exhibit 1). That Exhibit included reference to an affidavit of probable cause showing that the Respondent was in possession of vials of Hydromorphone and many other controlled substances in amounts larger than meant for a single individual without prescriptions, some of which came from the Lancaster General Hospital (without authorization), as well as syringes and needles. At the time the Respondent was a traveling nurse working at the Lancaster General Hospital.

Conclusions of Law

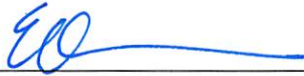
Vermont Law allows expedited and summary suspension of a professional license if the State can show by a preponderance of evidence, and the agency so finds, that public health, safety or welfare imperatively requires emergency action. 3 VSA Sec. 814(c) In this case the facts have demonstrated a probable violation of 26 VSA Sec. 1582(a)(3) [Engaging in conduct of a character likely to deceive or harm the public], and 3 VSA Sec. 129a(a)(15) [Failing to exercise independent professional judgment in performance of licensed activities] and 26 VSA Sec. 1582(a)(2) [Diverting or attempting to divert drugs or equipment or supplies for unauthorized use]. The public health, safety and welfare imperatively require emergency action and immediate suspension of the Respondent's Vermont nursing license.

Our Findings of Fact and Conclusions of Law in this summary suspension hearing are for purposes of deciding whether *at this time* there is an imperative need to take emergency action. 3 V.S.A. § 814(c). Our Findings of Fact and Conclusions of Law herein are for purposes of this order only.

Order

The Request for Summary Suspension is **Granted**.

Vermont Board of Nursing

By: 
Ellen Watson, APRN, Chair

Date: November 13 2019

DATE OF ENTRY: 11.20.19

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.



Order

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Secretary of State
Professional Regulation

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

IN RE:)
DAVID MCMONIGLE) Docket No. 2019- 107
License No. 026.0139381)

REQUEST FOR SUMMARY SUSPENSION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Elizabeth A. St. James, and petitions the Board of Nursing to summarily suspend the license of Registered Nurse David McMonigle. In support of such petition, the State alleges the following:

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. David McMonigle ("Respondent") of Thornton, Pennsylvania is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0139381. This license was originally issued June 20, 2019, and expires on March 31, 2021.
4. Respondent is also licensed as a Registered Nurse in Pennsylvania under license number RN683852.
5. On August 8, 2019, the Pennsylvania Board of Nursing issued an Order of Temporary Suspension of Respondent's RN license for diversion of Hydromorphone, Polyxyxin B Trimethoprim Ophthalmic, Hyoscyamin Sulfate, Risperidone, syringes, and hypodermic needles from Lancaster General Hospital, as well as possession of a number of other drugs and supplies from unknown sources.
6. At the time the above substances and supplies were found in Respondent's possession, he was a travel nurse employed by Lancaster General Hospital.

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7. As of the filing of this Request for Summary Suspension, Respondent's Pennsylvania license remains suspended.

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

8. The State re-alleges and incorporates Paragraphs 3 through 7 above.
9. As a Registered Nurse, Respondent is prohibited from diverting or attempting to divert drugs, equipment, or supplies for unauthorized use.
10. Respondent diverted or attempted to divert drugs for unauthorized use as demonstrated in Paragraphs 2 through 7 above.
11. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because Respondent has committed unprofessional conduct in violation of 26 V.S.A. §1582(a)(2).

Violation Two: 26 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.

12. The State re-alleges and incorporates Paragraphs 3 through 7 above.
13. As a Registered Nurse, Respondent is prohibited from engaging in conduct of a character likely to deceive, defraud, or harm the public.
14. Paragraphs 3 through 7 above demonstrate Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public.
15. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because the Respondent has committed unprofessional conduct in violation of 26 V.S.A. §1582(a)(3).

Violation Three: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

16. The State re-alleges and incorporates Paragraphs 3 through 7 above.
17. As a Registered Nurse, Respondent is required to exercise independent professional judgment in the performance of licensed activities.
18. Paragraphs 3 through 7 above demonstrate Respondent failed to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.

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19. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for summary suspension because the Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

Relief Requested

20. Respondent currently has an unencumbered license. Members of the public, patients, and potential patients have no way of learning of Respondent's dangerous behavior and will remain unprotected pending suspension of Respondent's license. The facts as set out above establish that in order to protect the public health, safety, or welfare of the people of the State of Vermont, emergency action is imperative.

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's Licensed Practical Nursing license, number 026.0139381, be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 23rd day of October, 2019.

STATE OF VERMONT
SECRETARY OF STATE

By: Elizabeth A. St. James
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