

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

IN RE:	)	
JESSE G. PALKER	)	Docket No. 2015-219
License No. 075.0089528	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COME the State of Vermont, by and through State Prosecuting Attorney S. Lauren Hibbert, and the Respondent, Jesse G. Palker, 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. § 1595; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation

Stipulated Facts

2. Jesse G. Palker (the "Respondent") of Westford, Vermont is licensed by the State of Vermont as a Licensed Nursing Assistant under license number 075.0089528. This license was originally issued on or about August 17, 2012, and is currently set to expire on or about November 30, 2016.
3. At all times relevant, the Respondent was employed as a Licensed Nursing Assistant at University of Vermont Medical Center (the "Facility"), located in Burlington, Vermont.
4. On or about May 12, 1015, Respondent was observed slumped over in a car by Lieutenant Beaulieu of Essex Police Department.
 - a. Respondent's car was in an active lane of travel at the intersection of two roads.
 - b. Respondent did not respond to painful stimulus and Lieutenant Beaulieu went to his cruiser to obtain his pocket mask and again performed painful stimulus.

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- c. Respondent then became responsive, and when asked by Lieutenant Beaulieu Respondent denied using any drugs. .
- d. Lieutenant Beaulieu observed a small bag of Heroin in the center console of Respondent's car and a "bundle" of Heroin in Respondent's door handle on the driver's side. A bundle contains 10 bags of Heroin sold together. In this instance, they were grouped with a rubber band and marked with the stamp "chocolate." Lieutenant Beaulieu had responded to a previous overdose where the Heron used was marked "chocolate." Lieutenant Beaulieu also found drug paraphilia in Respondent's car.
- e. On May 14, 2015, Respondent was questioned by Lieutenant Beaulieu and he stated that on May 12th he was driving home from work and he used Heroin hours before he was observed in the intersection. Review of UVM employment records show that he worked the morning of May 10, 2015 and did not work again until May 15, 2015. The State is unaware if Respondent works for another location in a licensed nursing assistant position.
- f. On May 19, 2015, Respondent was arraigned in Chittenden Criminal Division of Vermont Superior Court for violating 23 V.S.A. § 1201(a)(3) – operating vehicle under the influence of intoxicating liquor or other substance.
- g. Prior to entering into this Stipulation and Consent Order, Respondent has provided proof of negative random drug screens. Additionally, Respondent is currently enrolled in the DayOne Program. His is also in compliance with IOP probation and with an estimated completion of probation on XXXX date.

Violations

- 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. 26 V.S.A. § 1592(5) (is unfit or incompetent to function as a nursing assistant by reason of any cause);
 - b. 26 V.S.A. § 1592(7) (is habitually intemperate or is addicted to the use of habit-forming substance);
 - c. 3 V.S.A. § 129a(a)(5) (practicing the profession when medically or psychologically unfit to do so); 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).

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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.
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 **CONDITIONS** Respondent's license **FOR A MINIMUM OF THREE (3) YEARS**. The conditions will be as follows:
 1. Re-issuance of License. Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."
 2. Length of Time of Conditions Imposed. The conditions shall remain in place until Respondent has completed all conditions ordered. Respondent shall be subject to the conditions until Respondent completes a **minimum of three (3) years** of supervised nursing in which Respondent works at least forty (40) hours every two (2) weeks as a licensed nursing assistant. Part time hours of fewer than forty (40) hours every two

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(2) weeks shall be credited on a prorated basis. Respondent shall be prohibited from working more than forty (40) hours per week.

3. Completion of Substance Abuse Counseling, Treatment Plan, Treatment Reports and recovery groups. Respondent shall enter into and continue substance abuse counseling and comply with substance abuse treatment plan until the pre-approved treating professional certifies in writing to the Board that such counseling is no longer necessary.

Respondent shall authorize Respondent's treating professional to submit to the Board **monthly** reports on forms issued by the Board. Respondent shall authorize Respondent's treating professional to provide all information requested by the Nursing Board, either orally or in writing, at any time during the period this Consent Order is in effect.

Respondent shall participate as recommended by Respondent's treating professional in substance abuse recovery group(s), and shall submit **quarterly** reports documenting such attendance on forms issued by the Board.

4. Random Drug and Alcohol Testing. Respondent shall submit to random drug and alcohol screenings at the request of the Board or its designee. Respondent shall designate a person or entity that has been pre-approved by the Board or its designee to administer random drug and alcohol screens. All testing shall be done on a random, unannounced basis and analyzed by a lab qualified to analyze samples for forensic purposes and approved by the Board. All urine specimens collected for tests shall be collected in an observed setting. All screens shall be negative.

Failure to appear for, refusal to provide, adulteration of, dilution of, or tampering with a sample for any urine screen shall cause that screen to be presumed positive. Any positive screen shall constitute a violation of this Order.

5. Abstain from Drug and Alcohol Use. Respondent shall abstain completely from the consumption or possession of alcohol and drugs.
6. Drug Use Exception. Respondent may take scheduled/controlled medications lawfully prescribed for a bona fide illness or condition by a health care practitioner disclosed to the Board in writing by Respondent within forty-eight (48) hours of the prescription. Respondent health care practitioner shall inform the Board, in writing and on appropriate letterhead, of knowledge of Respondent's substance abuse issue(s) within seven (7) days of entering into the practitioner/patient relationship. Additionally, the practitioner shall inform the Board of all scheduled/controlled medications prescribed – and the anticipation of how long such prescriptions will need to be taken – within seven (7) days of the prescription.

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The Board or its designee may request that the practitioner document the necessity for the prescribed scheduled/controlled medications or other medications known to have abuse potential. It is not anticipated that Respondent would be prescribed scheduled/controlled medication during the term of this Consent Order for a period greater than fourteen (14) days, but if so, then the conditions herein may be revoked by the Board.

Respondent shall provide the Board with a current medication list of any medications taken on a scheduled or as-needed basis on forms issued by the Board within seven (7) days of the date of reinstatement and shall update this list within forty-eight (48) hours of any change in these medications.

7. Notification to Employers/Nursing School. Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any current or future setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Consent Order or of any subsequent nursing employment, Respondent shall cause Respondent's immediate supervisor to submit to the Board an employer agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability to comply with the conditions in the Consent Order.

In the event Respondent is attending a nursing program which has a clinical portion that involves actual patient care, Respondent shall provide a copy of the Stipulation and Consent Order to the Program Director. Respondent shall cause the Program Director to submit to the Board a nursing program agreement form approved by the Board, acknowledging receipt of the Stipulation and Consent Order and the ability of the program to comply with the conditions in the Consent Order during clinical experience.

8. Reports from Employers/Program Director. Within one (1) month of the date of reinstatement or within one (1) month of the commencement of nursing employment and **monthly** thereafter, Respondent shall cause every nursing employer Respondent has worked for during the month to submit to the Board an evaluation of Respondent's work performance and attendance during that month. Moreover, on a **quarterly** basis, these reports shall include the results of the employer's medication audits of Respondent's medication administration and practices. In the event Respondent is attending a nursing program, Respondent shall cause the Program Director to submit to the Board, on a monthly basis, a written evaluation of Respondent's performance and attendance. These reports shall be submitted in writing on forms issued by the Board. All employer reports shall indicate satisfactory performance (ie., consistently meeting all standards of nursing practice) and attendance.
9. Practice Under Supervision. Respondent shall practice as a licensed nursing assistant only in a setting where Respondent has direct supervision for the entire shift by a licensed nurse that is in good standing with the Board.

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10. Types of Employment Prohibited. Respondent shall not work in a supervisory role. Respondent shall not work for a nurse registry, traveling nurse agency, float-pool, home health care agency, temporary nursing employment agency, or as a private duty nurse or personal care provider requiring a nursing or nursing assistant license during the effective period of this Consent Order.
11. Interview with the Board or its Designee. Respondent shall appear in person for interviews with the Board or its designee upon request.
12. Out-of-State Practice. Before any out-of-state practice can be credited toward fulfillment of these terms and conditions, Respondent shall first obtain approval from the Board. The Board will approve out-of-state nursing practice so long as Respondent can still comply with the provisions of this Consent Order. If Respondent receives discipline on a nursing license held in another state during the conditioned period, Respondent must inform the Board of such, in writing, within ten (10) days of receiving such discipline.
13. Notification of Place of Employment/Personal Address/Telephone Number. Within ten (10) days of the date of entry of this Consent Order, Respondent shall notify the Board, in writing, of Respondent's current place of employment, personal address, and telephone number. Respondent shall further notify the Board, in writing, within forty-eight (48) hours of any change in employment (including resignation or termination), personal address, or telephone number.
14. Notification to Other States. In the event that Respondent is licensed in nursing in any other state(s), Respondent must inform the nursing licensing board of the state(s) in which Respondent is licensed of the conditional status of Respondent's Vermont nursing license within thirty (30) days of the date of entry of this Order.
15. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
16. Release of Information Forms. This Order requires Respondent to authorize drug and/or alcohol treatment providers to report information in verbal and/or written format and/or to discuss Respondent and any and all treatment rendered to Respondent for drugs and/or alcohol with the Board or its designee. Any and all of this information may be provided to the Office of Professional Regulation investigators, and that the information may be used for further prosecutions if so warranted or if the Office of Professional Regulation determines that said information violates the terms of this Order or any rules or laws governing the profession of nursing.

Respondent is entitled to revoke this consent at any time. However, any revocation shall be considered a violation of this Order. This consent expires when the conditions are removed from Respondent's nursing license.

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This Stipulation and Consent Order shall itself constitute a valid written consent pursuant to the requirements of 42 C.F.R. § 2.31. Respondent understands that Respondent's treatment provider may require Respondent's to sign a separate and distinct consent meeting the requirements of 42 C.F.R. § 2.31.

17. Costs. Respondent shall bear all costs of complying with this Consent Order.
18. Violation of this Order. If Respondent violates this Order the Board, after giving Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
19. Completion of Conditional License Period. Respondent must petition the Board, or its designee, to remove any and all conditions on Respondent's license. Respondent must present proof that Respondent has fully complied with the terms of this Order. Respondent must also present proof of successful substance abuse rehabilitation, that Respondent poses no danger to the public or the practice of nursing, and that Respondent can safely and competently perform the duties of a licensed nurse.
- B. Notwithstanding any provision above, the Respondent must continue to meet all Board requirements for maintaining a license, license renewal and license reinstatement.
- 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).
- D. 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: 11/30/15

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

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JESSE G. PALKER
RESPONDENT

Dated: 11.25.15

By: Jesse G. Palker
Jesse G. Palker

APPROVED AS TO FORM:

Dated: 11/24/15

ATTORNEY FOR RESPONDENT

By: Paul Jarvis
Paul Jarvis, Esq.

APPROVED AND SO ORDERED:

Dated: 12/14/15

VERMONT BOARD OF NURSING

By: Jeanne Carr
Chairperson

Date of Entry: 12/15/15

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**STATE OF VERMONT
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BOARD OF NURSING**

In re: JESSE G. PALKER
License No. 075.0089528

}
} Docket No. 2015-219 (LNA)
}

SUMMARY SUSPENSION ORDER

Appearances:

Prosecuting the case: S. Lauren Hibbert, 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 July 13, 2015 at the Office of Professional Regulation in Montpelier, Vermont. Respondent 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 as follows:

1. Respondent is a Licensed Nursing Assistant, licensed in Vermont. His license is currently set to expire on or about November 30, 2016. He 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.
3. The Request for Summary Suspension alleges that the public health, safety or welfare imperatively requires emergency action.

4. Notice of this hearing was sent to Respondent at his last known address via certified mail dated July 2, 2015. There was no evidence in the file as to whether the notice was received by the Respondent or not. As of the date of the hearing none of the notice communications to the Respondent had been returned to the Office of Professional Regulation. The Respondent did not appear at the hearing or otherwise defend.
5. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree. The State presented an affidavit from Lieutenant Ken Beaulieu of the Essex Police Department (State Ex. 1) The affidavit established facts showing that the Respondent was recently using, and is likely addicted to, heroin. Specifically, in the affidavit of Officer Beaulieu, the Respondent admitted to Officer Beaulieu that the Respondent "...uses heroin as a pain management tool...". (See State Ex. 1)
6. The Respondent has been criminally charged with operating a motor vehicle while under the influence of drugs after his car was found stopped in an intersection, past the stop line, and in the traveled lane of traffic. The Respondent was unconscious in the driver's seat of the vehicle. Material which appeared to be heroin and implements of "intra venous drug use" were also found the vehicle. (State Ex. 1).
7. At one point, the Respondent admitted to the investigating officer that he had used heroin near in time to his work. (See Paragraph 9 of State Exhibit 1).
8. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm.

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). It is a requirement of Vermont practice for Licensed Nursing Assistants that they be fit and competent to practice and that they not be habitually intemperate or addicted to habit forming substances. See 26 VSA Sec. 1595(5) and (7). There is strong evidence to show that the Respondent is in violation of both of these requirements.

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

Date: July 13, 2015

DATE OF ENTRY: 7/13/15

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
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BOARD OF NURSING

IN RE:
JESSE G. PALKER
License No. 075.0089528

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Docket No. 2015-219

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 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.
2. The Board of Nursing is authorized by 3 V.S.A. § 814 to summarily suspend the license of a nursing assistant when it finds that the public health, safety, or welfare imperatively requires emergency action.

Statement of Facts

3. Jesse G. Palker (the "Respondent") of Westford, Vermont is licensed by the State of Vermont as a Licensed Nursing Assistant under license number 075.0089528. This license was originally issued on or about August 17, 2012, and is currently set to expire on or about November 30, 2016.
4. At all times relevant, the Respondent was employed as a Licensed Nursing Assistant at University of Vermont Medical Center (the "Facility"), located in Burlington, Vermont.
5. On or about May 12, 2015, Respondent was observed slumped over in a car by Lieutenant Beaulieu of Essex Police Department.
 - a. Respondent's car was in an active lane of travel at the intersection of two roads.
 - b. Respondent did not respond to painful stimulus and Lieutenant Beaulieu went to his cruiser to obtain his pocket mask and again performed painful stimulus.
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- d. Lieutenant Beaulieu observed a small bag of Heroin in the center console of Respondent's car and a "bundle" of Heroin in Respondent's door handle on the driver's side. A bundle contains 10 bags of Heroin sold together. In this instance, they were grouped with a rubber band and marked with the stamp "chocolate." Lieutenant Beaulieu had responded to a previous overdose where the Heron used was marked "chocolate." Lieutenant Beaulieu also found drug paraphilia in Respondent's car.
- e. On May 14, 2015, Respondent was questioned by Lieutenant Beaulieu and he stated that on May 12th he was driving home from work and he used Heroin hours before he was observed in the intersection. Review of UVM employment records show that he worked the morning of May 10, 2015 and did not work again until May 15, 2015. The State is unaware if Respondent works for another location in a licensed nursing assistant position.
- f. On May 19, 2015, Respondent was arraigned in Chittenden Criminal Division of Vermont Superior Court for violating 23 V.S.A. § 1201(a)(3) – operating vehicle under the influence of intoxicating liquor or other substance.

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.
7. The above acts and circumstances, alone or in combination, violate:
- a. 26 V.S.A. § 1592(5) (is unfit or incompetent to function as a nursing assistant by reason of any cause);
 - b. 26 V.S.A. § 1592(7) (is habitually intemperate or is addicted to the use of habit-forming substance);
 - c. 3 V.S.A. § 129a(a)(5) (practicing the profession when medically or psychologically unfit to do so); 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).

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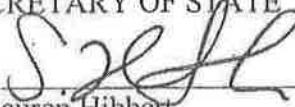


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WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 075.0089528 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 2 day of July, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By: 
S. Lauren Hibbert
State Prosecuting Attorney

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