

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

In re: JODI A. STEWART
License No. 025.0009501

}
} Docket No. 2015-315
}

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: S. Lauren Hibbert, Esq.
Respondent: *pro se*

Board members participating:

Deborah Swartz, RN, Acting Chair
John Welch, Jr.
William G. White, Jr.
Douglas Sutton, RN
Virginia Hudson, RN
Sheila Davis, LPN
Luana Tredwell, LPN
Jennifer Laurent, APRN
Kelly Sinclair, LNA

Presiding Officer: George K. Belcher

**Summary Suspension Order
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

This matter came before the Vermont Board of Nursing on a Request for a Summary Suspension. The hearing was held on November 9, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. The Respondent appeared via telephone without counsel. 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 on the evidence presented at the hearing, the Board finds as follows:

- (1) Respondent is a Licensed Practical Nurse and is therefore subject to the regulatory authority of this Board. 3 V.S.A. §§ 129, 129a, 814(c) , and 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" dated November 4, 2015. A copy of the Request is attached to this Decision and Order. The Request alleges that the Respondent failed to practice competently (3 VSA Sec. 129a(b) (1) and (2)), diverted drugs for unauthorized use (26 VSA Sec. 1582(2)), engaged in conduct of a character likely to deceive, defraud or harm the public (26 VSA Sec. 1582(3)), and failed to comply with provisions of federal or state statutes (3 VSA Sec. 129a(a)(3)). The Request for Summary Suspension further alleges that the public health, safety or welfare imperatively requires emergency summary suspension of the license of the Respondent.
- (3) The Respondent received the Request for Summary Suspension on November 6, 2015 by personal service.
- (4) The Office of Professional Regulation investigator, Dennis Menard, investigated this matter. He interviewed the complainants at the Battenkill Valley Health Center in Arlington, Vermont. He also reviewed prescription records at that facility and pharmacy records at the local Walmart pharmacy.
- (5) In his investigation, Mr. Menard found that the Respondent had written a prescription in June, 2015 for herself for 60 tablets of Hydrocodone, APAP 7.5/325 mg, and she asked a co-worker, APRN K.T., to sign the prescription based upon her statement to APRN K.T. that the Respondent had a previous prescription and diagnosis of migraine headaches. Mr. Menard could find no prior diagnosis of migraine headaches in his review of the medical records for the Respondent.
- (6) The Respondent testified that she had been prescribed "Hydrocodone 5/325 mg" about three months prior to her request to APRN K.T. to sign the June prescription. This prior prescription was not found by Mr. Menard and, in any event, the prescription written by the Respondent for herself is 50% higher than the prior dose to which she testified she had previously.
- (7) The Respondent also filled out three prescriptions to Respondent's fiancé, J.D., for Oxycodone-Acetaminophen 7.5/325 mg. (June 5, 2015 for 60 tablets, June 18, 2015 for 90 tablets, and July 2, 2015 for 90 tablets). The first two of these prescriptions were signed by APRN K.T. at the request of the Respondent and were filled. The third prescription was written by Respondent but was not signed or filled. It was found under the Respondent's keyboard and not signed by a provider.
- (8) Mr. Menard's investigation showed that on April 27, 2015 J.D. was told by his medical provider that the provider would not continue prescribing controlled substances to J.D.
- (9) The Board considered: (1) the explanations of the Respondent; (2) the context of a patient requesting a colleague to sign a prescription as requested without independent examination, diagnosis, or review; (3) the nature of the drugs requested and the quantities requested over the time period involved; and (4) the potential risk to the public if addiction and diversion is the likely explanation for the prescriptions.
- (10) The risk of harm to the public health, safety and welfare includes diversion of regulated drugs from places where the drugs are monitored and needed by patients.

- (11) The Respondent is currently working at another health care facility and presumably has access to regulated drugs. The nature of the complaint and the facts as alleged and as found above, show that protection of the public requires immediate and imperative emergency action.

CONCLUSIONS OF LAW

- (1) The State has the burden of proof to establish that the public health, safety or welfare are at risk and that the proven risk to the public imperatively require emergency action. See 3 VSA Sec. 814(c). The timing, nature, and purpose of the administrative hearing may define the scope and procedural parameters of an administrative hearing. See In re Miller, 2009 VT 112, 989 A.2d 982 (Vt. 2009) at Para. 14. In summary suspension hearings, the administrative authority may look to the allegations, as well as the factual basis for the allegations, to make its findings. Where further hearings are necessary to resolve factual disputes, the Respondent should be afforded the ability to seek a post-summary-suspension review. See In re Dahmad, 201 Ariz. 394, 36 P.3d 742 (2001).
- (2) In this case the State has adequately established that the public health, safety and welfare are at risk where the Respondent is working with access to regulated drugs and that the proven risk to the public requires emergency action.
- (3) The 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). The Findings of Fact and Conclusions of Law herein are for purposes of this Order only.
- (4) 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. The 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. This order is subject to motions for reconsideration, which may be filed at any time, but this order shall be effective immediately upon entry.

Order

The Request for Summary Suspension is **Granted**. Respondent's license as a Licensed Practical Nurse is hereby **SUMMARILY SUSPENDED**. Further proceedings shall be promptly instituted and determined. 3 V.S.A. § 814(c).

APPEAL RIGHTS

This is a final administrative determination by the Vermont Office of Professional Regulation. 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.

The Vermont Board of Nursing

By:


Deborah Swartz, RN
Acting Chair of the Board

Date: November /0, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY:

11/10/15

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

IN RE:
JODI A. STEWART
License No. 025.0009501

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Docket No. 2015-315

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. Jodi A. Stewart (the "The Respondent") of Bennington, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse under license number 025.0009501. This license was originally issued on or about June 23, 2008 and is currently set to expire on or about January 21, 2016.
4. During the relevant time period, Respondent was employed as an LPN at Battenkill Valley Health Center in Arlington, Vermont.
5. On June 26, 2015, Respondent wrote a prescription for herself for 60 tablets of Hydrocodone APAP 7.5/325 mg.
 - a. Respondent secured the signature of KT, APRN, on the prescription, based on the false information that Respondent had previously been prescribed this medication for migraines.
6. Respondent wrote three prescriptions for Respondent's domestic partner, J.D., for Oxycodone-Acetaminophen 7.5/325 mg. One prescription written on June 5, 2015 was for 60 tablets, a second prescription on June 18 was for 90 tablets, and a third prescription, on July 2, 2015, was for 90 tablets.

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- a. Respondent secured the signature of KT, APRN, on two of these prescriptions for J.D., even though J.D. had been told by his provider A.P. at Battenkill Valley Health Center that A.P. would no longer prescribe controlled substances to J.D. due to lack of diagnostic evidence that such medication was warranted for J.D.
 - b. The third prescription, written on July 2, 2015, was found under her keyboard fully completed but without a provider's signature.
7. Respondent admitted to OPR Investigator Dennis Menard that she wrote the prescriptions. She stated that she had been diagnosed with migraines in the past but that it was in an ED and she could not recall when that diagnosis occurred or the treatment provider who made the diagnosis.

Request for Relief

8. 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.
9. The above acts and circumstances, alone or in combination, violate:
- a. 26 V.S.A. § 1582(2)(Diverting or attempting to divert drugs or equipment or supplies for unauthorized use);
 - b. 26 V.S.A. § 1582(3)(Engaging in conduct of a character likely to deceive, defraud, or harm the public);
 - 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, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0009501 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 4 day of November, 2015.

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