

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

In re: Jennifer M. Tucker	}	
License No. 025.0098346	}	Docket No. 2016-102 (LPN)
	}	

SUMMARY SUSPENSION ORDER

Participating Board Members:

Ellen Watson, APRN, Vice Chair
William G. White, Jr., Public Member
Jennifer Laurent, APRN
Douglas Sutton, RN,
John Welch, Jr., Public Member,
Kelly Sinclair, LNA
Deborah Swartz, RN

Appearances:

Prosecuting the case: Elizabeth Jarvis, Esq.
Respondent: appeared *pro se*

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 May 2, 2016, at the Office of Professional Regulation in Montpelier, Vermont. Respondent appeared on her own behalf without counsel.

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 Practical Nurse, licensed in Vermont. Her license is currently set to expire on or about January 31, 2018. She is therefore 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." 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. The allegations in the Request for Summary Suspension (copy attached) have been established to the necessary degree. The State presented the testimony of Registered Nurse T.J. who established the allegations set forth in paragraphs 5 and 6 of the Specification of Charges. The State also presented the testimony of Licensed Nursing Assistant C.P., to establish the allegations of paragraph 9 of the Specification of Charges. The State also presented the testimony of the acting Director of Nursing Services, D.A., who offered persuasive testimony to establish the facts contained in paragraphs 7, 8, and 10-12 of the Specification of Charges. In summary, it appears clear to the Board that the Respondent, as the nurse in charge of medications, diverted medications, manipulated the drug records to avoid detection of the diversion, attempted to defraud her supervising management concerning the Respondent's drug use, and failed to file accurate records concerning her nursing practice. The nature of the drugs diverted and the wide scope of the diversions persuades the Board that the Respondent is currently unable to competently and safely practice nursing.
5. The Respondent did not substantively contest any of the allegations in the Request for Summary Suspension or the evidence presented.
6. The evidence presented show facts which imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension is necessary to prevent patient harm and to protect the general integrity of the medical profession.

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).

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: 
Ellen Watson, APRN, Vice- Chair

Date: May 2, 2016

DATE OF ENTRY: 5/9/16

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

IN RE:)
JENNIFER M. TUCKER)
License No. 025.0098346)

Docket No. 2016-102

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 M. Tucker (the "Respondent") of Bethel, Vermont is licensed by the State of Vermont as a Licensed Practical Nurse ("LPN") under license number 025.0098346. This license was originally issued on or about December 17, 2013, and expires on or about January 31, 2018.
4. During the relevant time period, Respondent was employed as an LPN at Berlin Health and Rehabilitation Center (the "Facility"), located in Barre, Vermont.
5. On or about February 21, 2016, at the end of her shift, RN T.J. conducted a change of shift medication count on C wing with the Respondent, at or about 7 a.m. After T.J. left, the Respondent was the only nurse working on that unit and the only person with access to the keys for controlled substances.
6. On or about February 21, 2016, Nurse T.J. returned to the Facility for a second shift at or about 3 p.m. T.J. conducted a change of shift medication count on C wing with the Respondent at that time, and discovered that page seventy-three/seventy-four (73/74) had been torn out of the narcotics log. T.J. remembered that this page corresponded to one-hundred thirty-one Dilaudid that were waiting to be destroyed. T.J. remembered counting the unusual amount of medication over several shifts without the count ever changing, including the 7 a.m. count that morning.

STATE OF VERMONT



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

7. On or about February 21, 2016, after a controlled drug reconciliation at the Facility, the Director of Nursing discovered that a total of four (4) pages had been torn from narcotics log books.
8. After the reconciliation was complete, the Respondent approached the Director of Nursing and asked, "so how does this work? Do you need a urine sample, to check my purse, my car, or what?" The Director of Nursing had not spoken to the Respondent about any possible involvement in the missing pages prior to this comment.
9. On or about February 21, 2016, the Respondent approached Licensed Nursing Assistant ("LNA") C.P. and asked C.P. to provide a sample of her urine for the Respondent. The Respondent told C.P. that she was afraid she was going to be drug tested because some narcotics were missing. The Respondent explained to C.P. that she (the Respondent) would put the urine sample in a bottle and insert it like a tampon for when she was asked to provide the urine sample. The Respondent showed C.P. a bottle she could use, which C.P. did not recognize as anything the Facility used.
10. On or about February 22, 2016, evening nursing staff on C wing of the Facility discovered that the backup controlled drug kit for C wing did not contain any Oxycodone and the medication list for the kit was missing. The Respondent worked the day shift on C wing that day and was the only nurse that had keys to access the backup controlled drug kit during her shift.
11. On or about February 23, 2016, the Facility's pharmacy determined that Percocet, Oxycodone, and Oxycontin were missing from three separate backup controlled drug kits.
12. On or about February 25, 2016, the Facility attempted to notify the Respondent by phone that she had been taken off the schedule. When confronted about her involvement in the missing narcotics, the Respondent hung up the phone and never called back.
13. On or about March 14, 2016, in an interview with Investigator Dennis Menard, the Respondent stated she only asked her co-worker for a urine sample because she (the Respondent) knew she would be positive for marijuana.
14. The Respondent currently holds an unencumbered nursing license in the State of Vermont.

Charges

15. The above acts and circumstances, alone or in combination, violate:
 - a. 26 V.S.A. §1582(a)(2) (Diverting or attempting to divert drugs or equipment or supplies for unauthorized use);

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- b. 26 V.S.A. §1582(a)(3) (Engaging in conduct of a character likely to deceive, defraud, or harm the public);
- c. 26 V.S.A. §1582(a)(4) (Willfully failing to file or record, or willfully impeding or obstructing filing or recording, or inducing another person to omit to file or record medical reports);
- 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);
- e. 3 V.S.A. §129a(a)(7) (Willfully making or filing false reports or records in the practice of the profession; willfully impeding or obstructing the proper making or filing of reports or records or willfully failing to file the proper reports or records);
- f. 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); and
- g. 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);

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's nursing license number 025.0098346 be summarily suspended, pending a hearing on the merits.

DATED at Montpelier, Vermont this 21st day of April, 2016.

STATE OF VERMONT
SECRETARY OF STATE

By: Elizabeth A. Jarvis
Elizabeth A. Jarvis
State Prosecuting Attorney

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