

**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
PHYSICAL THERAPISTS**

In re: WILLIAM R. DUFRESNE
License No. 040.0003317

}
} Docket No. 2015-343
}

**DECISION ON REQUEST FOR
SUMMARY SUSPENSION ORDER**

Appearances:

Prosecuting the case: Elizabeth Jarvis, Esq.
Respondent: did not appear

Administrative Law Officer: George K. Belcher

Exhibits introduced and admitted:

State Ex. 1: New Hampshire Order of Emergency License Suspension and Notice of
Hearing dated 7/30/15
State Ex. 2: Voluntary Surrender of New Hampshire License dated 8/13/15

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

This matter came before the Administrative Law Officer on a Request for a Summary Suspension. The hearing was held on September 3, 2015 at the Office of Professional Regulation Conference Room at the City Center in Montpelier, Vermont. The Respondent did not appear. The hearing authority 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 and Conclusions of Law

Based on a review of the pleadings and on the evidence presented at the hearing, the Administrative Law Officer finds:

1. Respondent is a licensed physical therapist and is therefore subject to the regulatory authority of the Office of Professional Regulation. 3 V.S.A. §§ 129, 129a, 814(c) , and 26 V.S.A. Chapter 38, the Administrative Rules for Physical Therapists, 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. The Request alleges that the Respondent had his license suspended in another state for conduct which would constitute unprofessional conduct in this state (3 VSA Sec. 129(a)(5)); failure to practice competently (3 VSA Sec. 129a(b) (1) and (2)); failure to comply with the provisions of federal or State statutes or rules (3 VSA Sec. 129a(a)(3)); practicing the profession when medically or psychologically unfit to do so (3 VSA Sec. 129a (a)(5)); failure to exercise independent judgement when that judgment is necessary to avoid actions repugnant to the obligations of the profession (3 VSA Sec. 129a(a)(15)); and sexual harassment of a patient (26 VSA Sec. 2121(b)(1)).

3. The Request for Summary Suspension further 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 August 25, 2015. He received notice of the hearing on August 29, 2015 and signed a return receipt showing his receipt of the certified mail notice of hearing. At the hearing no testimony was offered. Two documents were introduced into evidence as the State's only evidence.
5. On or about July 30, 2015 the Physical Therapy Governing Board of the State of New Hampshire issued an Order of Emergency License Suspension of the Respondent's New Hampshire physical therapy license, based upon allegations that the Respondent inappropriately touched at least three separate patients during physical therapy sessions. That order states in part,

3. The Board has received information indicating that the continued practice of physical therapy by Respondent poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Respondent's license to practice physical therapy pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Preliminary Report of Investigation was provided to the Board.

4. In support of this Order of emergency License Suspension and Notice of Hearing, the Board alleges the following facts:

[thereupon the Board listed numerous alleged facts to show that the Respondent inappropriately touched, kissed, and sexually advanced upon possibly four separate female patients in the context of physical therapy treatment]

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against the Respondent pursuant to RSA 328-F:26, 541-A:30, and Phy 2018.02 (See State Ex. 1, pages 2 and 7)

6. The Respondent voluntarily surrendered his license on August 13, 2015. He relinquished all rights and privileges to practice physical therapy in the state of New Hampshire. In the surrender document the Respondent stated, "I admit no violations of RSA 328-F:23, II, but recognize that the fact of my voluntary surrender will be distributed by the Board under this disciplinary docket number." (See State Ex. 2)

7. New Hampshire allows summary suspension of a professional license under RSA 541-A:30 III which states in part,

If the agency finds that public health, safety, or welfare requires emergency action and incorporates a finding to that effect in its order, immediate suspension of a license may be ordered pending an adjudicative proceeding. The agency shall commence this adjudicative proceeding not later than ten (10) working days after the date of the agency order suspending the license....

8. Generally speaking, disciplinary action is taken by Vermont administrative boards only after a disciplinary hearing, after notice (3 VSA Sec. 814(c)), after evidence (3 VSA Sec. 810), after findings of fact (3 VSA Sec. 812), and after a “final decision” is rendered. (*Id.*) Summary suspensions, on the other hand, only require the finding that finds that “public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order...” 3 VSA Sec. 814(c). Such a finding can be made without prior notice, and based solely upon allegations, provided that a finding is made that emergency action is imperatively required to protect the public. *In re Miller*, 2009 VT 112, 989 A.2d 982 (Vt. 2009), Paragraphs 7 & 10. In a summary suspension hearing, allegations may be considered, as well as affidavits, investigative reports, and testimony without cross-examination. See *Dahnad v. Arizona State Board of Dentistry*, 201 Ariz. 394 (Ariz. App. Div. 1, 2001) 36 P.3d 742 (2001)
9. Due process and Vermont’s statute require that the summary suspension is effective only during the pendency of the disciplinary action and that “These proceedings shall be promptly instituted and determined.” 3 VSA Sec. 814(c). Moreover, the *Miller* case requires that the Respondent should be afforded an opportunity for post-suspension hearing. Such a hearing is offered by the ability of the Respondent to seek a reconsideration or review hearing. See generally AROPR 2.4, 1.2, 2.5, and 3.26
10. In this case the State prosecutor asks for “Reciprocal Discipline”.¹ Clearly the decision of the New Hampshire Board was preliminary and temporary. The New Hampshire Board found that the New Hampshire case “involves” imminent danger to life and/or health and that there was a “reasonable basis” for immediate suspension. The voluntary surrender of the license (with no admission of wrongdoing) apparently stopped the proceeding, or at least has held it in abeyance, with no ongoing process for determination of the allegations or the underlying facts supporting professional discipline.
11. In this Vermont proceeding, the State has proven that the Respondent’s license has been suspended in the State of New Hampshire (State Ex. 1) and that his license was surrendered while under investigation for egregious allegations (State Ex. 2). See 3 VSA Sec. 129(a)(5).
12. The other allegations of unprofessional conduct (sexual harassment, failure to exercise professional judgment, breach of federal or State statute, or medical or psychological unfitness) are sufficient to justify summary suspension. They were accepted for summary

¹ 3 VSA Sec. 129(a)(5) and Administrative Rules for the Office of Professional Regulation do not describe the extent to which a temporary suspension in another state can justify a suspension in this state. It is worthwhile to note in the attorney discipline context, the Vermont rules of attorney discipline require a “final adjudication in another jurisdiction that a lawyer has been guilty of misconduct” if the foreign case is to be conclusive evidence of misconduct in this state. See *In re O’Meara*, 2013 VT 17, 67 A.3d 280 (2013) and A.O. 9, Rule 20. E. Likewise, the discipline in this state is co-terminus with the foreign discipline. *Id.* Rule 20. D.

suspension in New Hampshire, and if proven, would justify professional discipline in Vermont.

13. The evidence presented imperatively requires emergency action for the public health, safety, and welfare. Specifically, summary suspension of the Respondent's license is necessary to prevent client harm.
14. 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. This order is subject to motions for reconsideration but shall be effective immediately upon entry.

Order

The Request for Summary Suspension is **Granted**. Respondent's license to practice physical therapy 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 Office of Professional Regulation. A party aggrieved by a final decision of a board or hearing authority 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. In cases of alleged irregularities in procedure, 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 decision, please refer to the attached stay instructions.

By:


George K. Belcher
Administrative Law Officer

Date: September 9, 2015

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 9-9-15

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
PHYSICAL THERAPISTS

IN RE:	)	
WILLIAM R. DUFRESNE	)	Docket No.: 2015-343
License No. 040.0003317	)	

REQUEST FOR SUMMARY SUSPENSION

Authority

1. The Administrative Law Officer (ALO) has jurisdiction to hear matters involving allegations of unprofessional conduct by physical therapists pursuant to 3 V.S.A. §§127, 129(a), 129a; 26 V.S.A. Chapter 38; the Administrative Rules for Physical Therapists; and the Rules of the Office of Professional Regulation.
2. The Administrative Law Officer is authorized by 3 V.S.A. § 814 to summarily suspend the license of a physical therapist when it finds that the public health, safety, or welfare imperatively requires emergency action.

Statement of Facts

3. William R. Dufresne ("Respondent") of Barnet, Vermont is licensed by the State of Vermont as a physical therapist under license number 040.0003317. This license was originally issued on or about November 30, 1999, and is currently set to expire on or about September 30, 2016. The Respondent currently has an unencumbered physical therapy license in the State of Vermont.
4. On or about July 30, 2015, the Physical Therapy Governing Board of the State of New Hampshire issued an Order of Emergency License Suspension of the Respondent's New Hampshire physical therapy license, based on allegations that the Respondent inappropriately touched three separate patients during physical therapy sessions.
5. On or about August 19, 2015, the Respondent voluntarily surrendered his New Hampshire physical therapy license to the New Hampshire Physical Therapy Governing Board, while under investigation for unprofessional conduct. At the time of his surrender, professional misconduct allegations were pending against the Respondent in New Hampshire, and remain pending despite the Respondent's voluntary surrender.
6. The conduct for which charges are pending against the Respondent in New Hampshire, and which lead to an Order of Emergency License Suspension in New Hampshire, would constitute unprofessional conduct in this state.

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7. The application of consistent and commensurate professional discipline between and among licensing jurisdictions tends to promote professional accountability and patient safety and is in the interest of public protection.
8. Without public discipline, members of the public, patients, and potential patients in the State of Vermont are unlikely to learn of Respondent's actions and subsequent discipline and will remain unprotected pending suspension of Respondent's Vermont 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.

Basis for Reciprocal Discipline

9. The conduct for which Respondent was disciplined in New Hampshire would constitute unprofessional conduct in this state and is properly the subject of discipline pursuant to:
 - a. 3 V.S.A. §129(a)(5) (The Board may discipline any licensee or refuse to license any person who has had a license application denied or license revoked, suspended, limited, conditioned or otherwise disciplined by a licensing agency in another jurisdiction for conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct).
 - b. 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);
 - c. 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);
 - d. 3 V.S.A. §129a(a)(5) (Practicing the profession when medically or psychologically unfit to do so);
 - e. 3 V.S.A. §129a(a)(15) (Failing to exercise independent judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession); and
 - f. 26 V.S.A. §2121(b)(1) (Sexual harassment of a patient).

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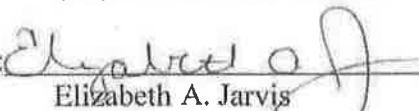
Relief Requested

WHEREFORE, the State of Vermont respectfully requests that pursuant to 3 V.S.A. § 814(c), the Respondent's physical therapy license number 040.0003317 be summarily suspended pending proceedings for revocation or other action.

DATED at Montpelier, Vermont this 24th day of August, 2015.

STATE OF VERMONT
SECRETARY OF STATE

By:


Elizabeth A. Jarvis
State Prosecuting Attorney

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