



STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE BOARD OF NURSING

21 S FRUIT ST STE. 16
CONCORD NH 03301-2431

Webpage: <http://www.state.nh.us/nursing>

TDD Access: Relay NH 1-800-735-2964

Nursing 603-271-2323

Nurse Asst. 603-271-6282

In the Matter of:
Renee Whipple, LNA
License No. 046027-24
(Adjudicatory Proceedings)

Docket No. 12-1102-0339-NA

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 326-B:37, IV; RSA 541-A; and New Hampshire Board of Nursing Administrative Rule ("Nur") 402.03 authorize the New Hampshire Board of Nursing ("Board") to suspend a license to practice nursing pending completion of an adjudicatory proceeding, in cases involving imminent danger to public health, safety and/or welfare. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. See, RSA 326-B:37, IV and RSA 541-A:30, III. No hearing date established in this proceeding shall be postponed at the request of the licensee unless the licensee agrees in writing to waive the 10-working day requirement. If the licensee waives the 10-working day requirement, the suspension shall remain in effect until the completion of the hearing. RSA 326-B:37, IV; Nur 402.03(c).
2. The Board first granted Renee Whipple, LNA ("Respondent") a license to practice as a licensed nursing assistant in the State of New Hampshire on April 18, 2011. Respondent holds license number 046027-24.
3. The Board has received information indicating that the continued practice of nursing by Respondent poses an imminent threat to public health, safety and/or welfare, which warrants the temporary suspension of Respondent's license to practice as a licensed nursing assistant pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a 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:
 - A. On July 13, 2012 a resident reported that Tramadol had been stolen from her apartment at Bentley Commons at Keene.
 - B. On July 13, 2012, Respondent was employed as a licensed nursing assistant at Bentley Commons at Keene.
 - C. The resident reported on two other occasions that Tramadol had been stolen from her apartment at Bentley Commons at Keene.
 - D. On October 23, 2012 another resident of Bentley Commons at Keene reported that Dilaudid had been stolen.

- E. On October 25, 2012 a resident of Bentley Commons at Keene reported Vicodin had been stolen.
 - F. In October 2012, Respondent was employed as a licensed nursing assistant at Bentley Commons at Keene.
 - G. Bentley Commons and Cheshire Medical Center – Occupational Health initiated random drug testing of the staff.
 - H. Renee Whipple, LNA tested positive.
 - I. On Friday, October 26, 2012, Respondent wrote an email to Meghan Cook of Bentley Commons stating that she had been addicted to Tramadol for about a year and was taking up to 20 pills a day.
 - J. Respondent admitted that she took the resident's Tramadol from her apartment at Bentley Commons at Keene.
 - K. The Keene Police Department interviewed Respondent who admitted that she stole the Tramadol on three (3) occasions and that she stole the Dilaudid.
5. Based upon the above information, the Board finds that the case involves imminent danger to public health and/or safety and/or welfare. 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 Respondent pursuant to RSA 326-B:37, IV; and Nur 402.03.
6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct, contrary to RSA 326-B:37, II and/or Nur 402.04(b), which warrants a continued license suspension under the provisions of RSA 326-B:37 and RSA 541-A:30, III, and/or the imposition of permanent disciplinary sanctions. The specific issues to be determined in this proceeding are:
- A. Whether, on or about July 13, 2012, Respondent committed professional misconduct by diverting a resident's Tramadol for her own use in violation of RSA 326-B:37, II (n) and/or (e) and/or (h); and/or,
 - B. Whether, in or about October, 2012, Respondent committed professional misconduct by diverting a resident's Dilaudid for her own use in violation of RSA 326-B:37, II (n) and/or (e) and/or (h); and/or,
 - C. Whether Respondent was addicted to Tramadol in violation of RSA 326-B:37, II (l) and/or (p)(1); and,
 - D. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 326-B:37, III and/or Nur 402.04(i).
7. While RSA 326-B:38, IX requires that the Board furnish Respondent at least 15 days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 326-B:37, IV, RSA 541-A:30, III and Nur 402.03 require the Board to commence an adjudicatory hearing within ten (10) days after the date an immediate, temporary license suspension order has issued under circumstances involving imminent danger to public health, safety or welfare.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice as a licensed nursing assistant is immediately suspended until further order of the Board pursuant to RSA 326-B:27, IV and RSA 541-A:30, III; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 326-B:37, III; RSA 541-A; and Nur 402.03 To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Renee Whipple, LNA shall appear before the Board on November 15, 2012 at 4:15 p.m., at the Board's office located at 21 South Fruit Street, Concord NH 03301-2431, to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 326-B:37. III and/or Nur 402.04 (i); and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Laurel A. O'Connor, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 326-B and RSA 541-A to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Robert A. Duhaime, RN, President, or any other person whom he may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and twelve (12) copies, and with an additional copy mailed to any party to the proceeding, and to Michael Brown, Esq., Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days or as soon as possible upon receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. Respondent shall pre-mark her exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days or as soon as possible before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days or as soon as possible prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Denise Nies, MSN, RN, BC, Executive Director, N.H. Board of Nursing, 21 South Fruit Street, Suite 16, Concord NH 03301-2431; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Denise Nies, MSN, RN, BC, Executive Director, N.H. Board of Nursing, at (603) 271-2323, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the address she supplied to the Board in her latest renewal application and on her counsel if Respondent notifies the Board that she will be represented. *See*, RSA 326-B:38, IX and Nur 205.03. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: November 2, 2012

Denise M. Nies
Denise Nies, MSN, RN, BC, Executive Director
Authorized Representative of the
New Hampshire Board of Nursing

* Board Members not participating:
S. Dyer, N. Fortin, K. Kidder, C. Smith