

State of New Hampshire  
Board of Nursing  
Concord, New Hampshire

In the Matter of:  
**Alissa Durgin, RN**  
License No. 062808-21  
(Adjudicatory Proceedings)

Docket No. \_\_\_\_\_

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

1. RSA 326-B:37, IV; RSA 541-A:30, III, 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 working days after the date of the emergency order. If the Board does not commence the hearing within 10 working days, the suspension order shall be automatically vacated. *See*, RSA 326-B:37, IV and 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. *See* RSA 326-B:37, IV and Nur 402.03(c).

2. Alissa Durgin, RN ("Ms. Durgin" or "Respondent") holds an active license, No. 062808-21, issued on 2/8/10, to practice as a registered nurse in the State of New Hampshire. Respondent's current license will expire on 8/29/13.

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 nursing pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. A preliminary 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. Respondent's current employment status is unknown. She had been working at Colonial Poplin Nursing Facility during the relevant time period.
- B. On or about May 7, 2013, Respondent came under suspicion following a diversion at this facility. The diversion was first discovered on the

morning of May 7, 2013 when it was learned that a 91-year old patient (Patient 1) was not wearing her prescribed fentanyl patch.

- C. Respondent had been caring for Patient 1 during the 3:00 p.m. – 11:00 p.m. shift on May 6, 2013. Respondent documented the removal and wasting of Patient 1's old patch. She also documented the application of a new fentanyl patch at 4:50 p.m.
- D. Respondent documented wasting the first patch. Per the facility procedures, a second staff member must document the wasting of any controlled medication. A second nurse's initials were listed as witnessing Respondent wasting the first patch. It was later discovered that this nurse did not witness Respondent wasting that first patch. Someone else had written down this nurse's initials.
- E. When staff discovered that Patient 1's fentanyl patch was missing, they questioned Patient 1 about its application. Patient 1 reported that a nurse had removed the old patch but failed to apply a new patch because she had an emergency in another room. Patient 1 stated that the nurse did not return to put on a new patch. Patient 1 provided a physical description of Respondent when asked to identify the nurse.
- F. Claiming sickness, Respondent left before the completion of her 3:00 p.m. – 11:00 p.m. shift. Respondent was asked to report her illness to the Unit Manager before leaving the building. She failed to do so.
- G. Staff found the manner of Respondent's sudden departure concerning. She left the keys to the medication cart with an LPN without performing a narcotic count or giving a resident report.
- H. Following Respondent's departure, staff noticed other concerns with the care that she provided that day. Respondent did not record administering certain medications, including a xanax pill. Respondent claimed that she did administer the medication to the patient but neglected to record it. She also failed to record removing medication in the medication log book and she failed to document various treatments administered during her shift.
- I. Respondent's treatment of Patient 2 also raised concerns. She documented that Patient 2's catheter was patent and draining urine. This was contradicted by the LNA on duty who reported that there was no urine in Patient 2's bag for most of the shift. When Patient 2 was examined, it was clear that she was in distress and the foley was kinked. When the foley was fixed, 950 cc of urine immediately drained.
- J. When the fentanyl patch was discovered to be missing, Colonial Poplin staff asked Respondent to report back to the facility. When Respondent arrived, she informed staff that she had mistakenly taken the old patch

home. She then proceeded to pull a patch out of the back pocket of her jeans.

- K. Upon inspection, it was noted that the patch was marked with an indecipherable scribble. The nurse who had applied the first patch had clearly marked it with her initials and the date when it was applied. The patch that Respondent returned appeared to be in very good condition for a patch that had been on a resident for three days.
- L. Due to concerns that Respondent had diverted the patch it was submitted to the state laboratory for testing. Despite Respondent's claim that the patch she possessed was the original patch worn by Patient 1 for three days, no DNA evidence from Patient 1 was present on the patch.
- M. Respondent is the major source of DNA found on the patch.
- N. Respondent has acknowledged having a history of pain that required medical treatment.
- O. The investigation into this matter is on-going.

5. Based upon the above information, the Board finds that the case involves imminent danger to public health, 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 the 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 around May 6 2013, Respondent committed professional misconduct by diverting a fentanyl patch from Patient 1, in violation of RSA 326-B:37, II (e) and/or (h); and/or, RSA 326-B:37, II (k) and/or RSA 326-B:37, II (l); and/or RSA 326-B:37, II (n); and/or
- B. Whether on or around May 6, 2013, Respondent committed professional misconduct by depriving Patient 1 of prescribed pain medication, in violation of RSA 326-B:37, II (e) and/or (h); and/or, RSA 326-B:37, II (k) and/or RSA 326-B:37, II (l); and/or RSA 326-B:37, II (n); and/or
- C. Whether on or around May 6, 2013, Respondent committed professional misconduct by falsely documenting that she had wasted a fentanyl patch as witnessed by another staff member, in violation of RSA 326-B:37, II (e) and/or (h) (1); and/or RSA 326-B:37, II (m); and/or RSA 326-B:37, II (p) (2); and/or

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:37, IV 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) working days after the date of 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 nursing is immediately suspended until further order of the Board pursuant to RSA 326-B:37, 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:30, III; 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 Respondent shall appear before the Board on June 20, 2013 at the Board's office located at 21 South Fruit St., Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 326-B:37, III and 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, Board Chairman, 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 Brian Buonamano, 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 his 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, BSN, RN, BC, Executive Director, N.H. Board of Nursing, 21 South Fruit St., Suite 16, Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Denise Nies, 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 he supplied to the Board in his latest renewal application. *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: June 7, 2013

Denise Nies

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

\* Recused Board Members not participating:

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