10-E49146

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

July 30, 2007

Kathleen Hebert, RN
166 Blohm Street
West Haven, CT 06516

Re: Memorandum of Decision
Petition Nos. 2002-0521-010-042
2002-0828-010-070
License No. E49146

Dear Ms. Hebert:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective July 16, 2007.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Memorandum of Decision.

Please be certain to retain this letter as documented proof that you have completed your license probation.

Thank you for your cooperation in this process, and good luck to you in the future.

Very truly yours,

Bonnie Pinkerton

Bonnie Pinkerton, RN, Nurse Consultant
Practitioner Licensing and Investigations Section

cc: J. Filippone
J. Wojick

Phone: (860) 509-7400
Telephone Device for the Deaf (860) 509-7191
410 Capitol Avenue - MS # 12HSR
P.O. Box 340308 Hartford, CT 06134
An Equal Opportunity Employer

STATE OF CONNECTICUT

BOARD OF EXAMINERS FOR NURSING

Department of Public Health — Petition Nos. 2002-0521-010-042, 2002-0828-010-070

vs.

Kathleen Hebert, RN, Lic. No. E49146 — **MEMORANDUM OF DECISION**

Respondent

Procedural Background

The Board of Examiners for Nursing (hereinafter "the Board") was presented by the Department of Public Health (hereinafter "the Department") with a Statement of Charges dated May 30, 2002 in Petition No. 2002-0521-010-042. Dept. Exh. A.

On September 4, 2002, the Department presented to the Board a Statement of Charges and Motion for Summary Suspension dated August 29, 2002 in Petition No. 2002-0828-010-070. Dept. Exh. A.

Both Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Kathleen Hebert (hereinafter "respondent"), which would subject respondent's registered nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

Based on the allegations in the Statement of Charges dated August 29, 2002, and the accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On September 4, 2002, the Board ordered, pursuant to its authority under § 4-182(c) and § 19a-17(c) of the General Statutes of Connecticut, that respondent's registered nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. Dept. Exh. A.

The Board issued a Notice of Hearing dated September 4, 2002, scheduling a hearing for September 18, 2002. Dept. Exh. A. The hearing was continued at the request of respondent and rescheduled for February 19, 2003. Dept. Exh. B.

Respondent was provided notice of the hearing and charges against her. Respondent filed a motion to consolidate dated September 20, 2002. The Board granted the motion on October 2, 2002. Resp. Exh. 1-1, pp. 9-11).

On September 9, 2002 the Department filed a motion to amend the August 29, 2002 Statement of Charges to incorporate all the allegations into one Statement of Charges ("the Amended Statement of Charges"). The Board granted the motion on October 16, 2002. Bd. Exh. 1.

The hearing took place on February 19, 2003 at the Hartford Hospital Newington Campus, 181 Patricia M. Genova Drive, Newington, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, February 19, 2003, p. 3.

Respondent submitted a written Answer to the Amended Statement of Charges. Resp. Exh. 1-1, pp. 12-13.

Each member of the Board involved in this decision attests that he/she was present at the hearing or has reviewed the record, and that this decision is based entirely on the record, the law, and the Board's specialized professional knowledge in evaluating the evidence.

.*Findings of Fact*

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Respondent is, and has been at all times referenced in the Amended Statement of Charges, the holder of Connecticut registered nurse license number E49146, which was issued on September 17, 1986. Dept. Exhs. C(B) and D(B); Resp. Exh. 1-1.

2. On or about October 2, 2001, respondent abused or utilized to excess alcohol. On or about May 11, 2002, respondent abused or utilized to excess morphine. On or about August 19, 2002, respondent abused or utilized to excess alcohol. Dept. Exh. C(A, p13, 18); Resp. Exh 1-1, p. 12.

3 Pursuant to a Consent Order dated June 6, 2001, the Board ordered respondent's registered nursing license placed on probation for a period of four years. Such disciplinary action was based upon respondent's admitted alcohol intoxication while working as a registered nurse. Dept. Exh. C(A); Resp. Exh 1-1, p. 12.

4. The Consent Order dated June 6, 2001 specifically provided that respondent submit weekly random urine screens for the first two years of probation and that all screens be negative for the presence of drugs and alcohol. Further, the Order specifically provided that respondent shall not obtain or use alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed heath care professional authorized to prescribe medications. Finally, the Consent Order specified that respondent engage in therapy and counseling with a Connecticut licensed or certified therapist. Dept. Exh. C(A); Resp. Exh 1-1, p. 12.

5. On October 2, 2001, respondent submitted to a urine screen which tested positive for alcohol. Dept. Exh. C(A, p13).

6. On May 11, 2002, respondent submitted to a urine screen which tested positive for morphine. Dept. Exh. C(A, p18).

7. On about August 28, 2002, respondent's therapist reported to the Department that respondent reportedly ingested alcohol on August 19, 2002. Dept. Exh. D(A, p. 12); Resp. Exh 1-1, p. 13.

8. Respondent entered an inpatient treatment program at High Watch Farm, Kent, Connecticut from August 24, 2002 to September 14, 2002. Dept. Exh. D(A, p.12) Resp. Exh 1-2, p. 1.

9. Respondent has been diagnosed with a bi-polar disorder. Respondent has been under the care of a psychiatrist since October 2001 for a mood disorder secondary to alcohol abuse. The disorder contributed to the relapse. Resp. Exh. 2; Transcript, pp. 49-54.

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered:

Kathleen Hebert held a valid registered nurse license in the State of Connecticut at all times referenced in the Amended Statement of Charges.

The Notice of Hearing and Amended Statement of Charges provided sufficient legal notice as mandated by *Conn. Gen. Stat.* § 4-177(a) and (b), and § 4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as § 19a-9-1 through § 19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Amended Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by *Conn. Gen. Stat.* § 4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

The **FIRST COUNT PARAGRAPH 2** of the Amended Statement of Charges alleges that respondent abused or excessively used alcohol on or about October 2, 2001; abused or excessively used morphine on or about May 11, 2002; and abused or excessively used alcohol on or about August 19, 2002,

The **FIRST COUNT PARAGRAPH 3** of the Amended Statement of Charges alleges that respondent's abuse of alcohol and/or morphine does, and/or may, affect her practice as a registered nurse.

Respondent admits the charges in the First Count Paragraph 2 with regard to alcohol, but denies the charge in the First Count Paragraph 2 with regard to morphine. Respondent denies the charges in the First Count Paragraph 3. Resp. Exh. 1, p. 1-12.

The General Statutes of Connecticut § 20-99 provides in relevant part:

> (a) The Board of Examiners for Nursing shall have jurisdiction to hear all charges of conduct which fails to conform to the accepted standards of the nursing profession brought against persons licensed to practice nursing. After holding a hearing . . . said board, if it finds such person to be guilty, may revoke or suspend his or her license or take any of the actions set forth in section 19a-17 . . . (b) Conduct which fails to conform to the accepted standards of the nursing profession includes, but is not limited to, the following . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . .

Based on its findings, the Board concludes that respondent's conduct as alleged in the First Count Paragraphs 2 and 3 of the Amended Statement of Charges is proven by a preponderance of the evidence presented. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(b)(5) and 19a-17.

The **SECOND COUNT PARAGRAPH 8** of the Amended Statement of Charges alleges that respondent tested positive for alcohol on October 2, 2001, tested positive for morphine on May 11, 2002, and ingested alcohol on August 19, 2002. In addition, respondent was hospitalized and admitted herself into treatment as a result of ingesting alcohol on August 19, 2002.

The **SECOND COUNT PARAGRAPH 9** of the Amended Statement of Charges alleges that respondent's conduct as described in the Second Count Paragraph 8(a), 8(b), and 8(c) constitutes a violation of the terms of respondent's probation as set forth in the Consent Order dated June 6, 2001.

Respondent admits that her therapist reported to the department that she reportedly ingested alcohol on August 19, 2002 and that she was admitted into treatment as a result of ingesting the alcohol on August 19, 2002. However, the respondent denies the charges in the Second Count Paragraphs 8 with regard to testing positive for alcohol and morphine but acknowledges that an October 2, 2001 drug screen report indicated a positive result for alcohol and that a May 11, 2002, drug screen report indicated a positive result for Morphine. Resp. Exh. 1, p. 1-13.

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraph 8 of the Amended Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct violates the terms of probation as set forth in the Consent Order dated June 6, 2001. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* 19a-17.

Order

Pursuant to its authority under *Conn. Gen. Stat.* § 19a-17 and § 20-99, the Board of Examiners for Nursing hereby orders the following:

1. That the Summary Suspension of respondent's registered nurse license, number E49146, ordered on September 18, 2002, is vacated on the effective date of this Memorandum of Decision.
2. That respondent's registered nurse license number E49146 is placed on probation for a period of four (4) years effective upon the date of the Memorandum of Decision.
3. If any of the following conditions of probation are not met, respondent's registered nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
    - A. During the period of probation the Board shall pre-approve respondent's employment and/or change of employment within the nursing profession.
    - B. Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
    - C. Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties for twelve (12) years upon her return to work as a nurse.
    - D. If employed as a nurse, respondent shall cause monthly employer reports to be submitted to the Board by her immediate supervisor during the entire probationary period.

E. The employer reports cited in Paragraph D above shall include documentation of respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph R below.

F. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or her employer shall notify the Board, within seventy-two (72) hours, of such termination.

G. If respondent pursues further training in any subject area that is regulated by the Department, respondent shall provide a copy of this Memorandum of Decision to the educational institution or, if not an institution, to respondent's instructor. Such institution or instructor shall notify the Department in writing as to receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt. Said notification shall be submitted directly to the Department at the address cited in Paragraph R below.

H. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist, approved by the Board and the Department, during the entire period of probation.

I. At her expense, respondent shall undergo a psychiatric evaluation, two (2) times per year, for the entire probationary period, to confirm her compliance with treatment for Bi-polar disorder.

J. Respondent shall provide a copy of this Memorandum of Decision to her therapist. The Board shall be notified in writing by her therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.

K. Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports are due on the first business day of each month.

L. The therapist reports cited in Paragraph K above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph R below.

M. (1) At her expense, respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire four (4) year probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.

(2) Respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking. For any prescription of a controlled substance(s) for more than two consecutive weeks, the respondent shall cause the provider prescribing the controlled substance(s) to submit quarterly reports to the Board and the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:

1. A list of controlled substances prescribed by this provider for the respondent;
2. A list of controlled substance(s) prescribed by other providers;
3. An evaluation of the respondent's need for the controlled substance;
4. An assessment of the respondent's continued need for the controlled substance(s).

(3) There must be at least one (1) such random alcohol/drug screen weekly during the entire probationary period.

(4) Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

(5) Random alcohol/drug screens must include testing for the following substances:

Amphetamines	Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

(6) Laboratory reports of random alcohol and drug screens shall be submitted directly to the Board and the Department, at the address cited in Paragraph R below, by respondent's therapist, personal physician or the testing laboratory.

N. Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.

O. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.

P. The Board must be informed in writing prior to any change of employment

Q. The Board must be informed in writing prior to any change of address.

R. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
Board of Examiners For Nursing
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

4. Any deviation from the terms of probation, without prior written approval by the Board, shall constitute a violation of probation which will be cause for an immediate hearing on charges of violating this Order. Any finding that respondent has violated this Order will subject respondent to sanctions under §19a-17(a) and (c) of the General Statutes of Connecticut, including but not limited to, the revocation of her license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future

extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to respondent's address of record (most current address reported to the Office of Practitioner Licensing and Certification of the Department of Public Health or the Board).

5. This Memorandum of Decision becomes effective the date it is signed by the Board of Examiners for Nursing.

The Board of Examiners for Nursing hereby informs respondent, Kathleen Hebert, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 16th day of July 2003.

BOARD OF EXAMINERS FOR NURSING

By _____

hebert2003