

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2004-0909-010-076

vs.

Gary Savaria, RN, Lic. No. E49287
Respondent

MEMORANDUM OF DECISION

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 and Motion for Summary Suspension dated October 20, 2004. Dept. Exh. 1. The Statement of Charges alleged, in two counts, violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Gary Savaria (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 and 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 October 20, 2004, 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. 1.

The Board issued a Notice of Hearing dated October 20, 2004, scheduling a hearing for November 3, 2004. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. The Notice of Hearing, Summary Suspension Order and Statement of Charges were delivered by certified mail to respondent on October 27, 2004. Dept. Exh. 1.

The respondent requested a continuance on November 1, 2004. The Board granted the continuance on November 16, 2004, and rescheduled the hearing to March 16, 2005. Dept. Exhs. 2, 3.

On January 27, 2005, the Department filed a Motion to Compel Disclosure and Production from respondent by March 1, 2005. Respondent did not respond to the motion. On February 17, 2005 the Board granted the Motion to Compel Disclosure and Production. Dept. Exhs. 4, 5.

On March 15, 2005, respondent requested a continuance due to medical reasons. The Board granted the request and rescheduled the hearing to June 15, 2005. Dept. Exhs. 7, 8.

On June 14, 2005, respondent requested a continuance via telephone. The June 15, 2005 hearing was rescheduled until August 18, 2005. Transcript, February 15, 2006, p. 6.

The August 18, 2005 the hearing was rescheduled until February 15, 2006. Respondent was provided notice of the rescheduled hearing by fax and first class mail on. Dept. Exh. 9.

The hearing took place on February 15, 2006, at the Hartford Hospital – Newington Campus, 181 Patricia M. Genova Drive, Newington, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. Transcript, p. 2.

Respondent did not submit an Answer to the Statement of Charges. During the hearing a Motion to Deem the Allegations Admitted previously filed by the Department on February 8, 2005 was granted. Dept. Exh. 6; Transcript, p. 10.

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 was issued registered nurse license number E49287 on September 17, 1986. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 10-tab c.
2. Pursuant to a Memorandum of Decision dated July 12, 1995, the Board ordered that respondent's registered nurse license be placed on probation for a period of five (5) years retroactive to March 22, 1995. Such disciplinary action was based upon respondent's attempt on July 1, 1994 to procure Motrin and Percocet with a fraudulent prescription; and for providing a false written statement to agents of the State of Connecticut, Department of Consumer Protection - Drug Control Division. Dept. Exh. 10-tab A, pp. 7-15.
3. Pursuant to a Consent Order dated March 17, 2004, the Board ordered that respondent's registered nurse license be suspended until May 19, 2004, followed by a four-year period of probation. Such disciplinary action was based upon respondent choosing not to contest allegations that he abused or excessively used controlled substances that had been prescribed to him; for the diversion and abuse of controlled substances while working at the Hospital for Special Care, New Britain, Connecticut from March 2001 through in or about September 2003; and for the falsification of controlled substance receipt records. Said Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications, and, that respondent shall submit to random alcohol/drug screening the results of which shall be negative for the presence of alcohol and drugs. Said order also required respondent to engage in therapy and counseling for the entire probationary period. Dept. Exh. 10-tab A17-A20.

4. Respondent submitted to random urine screening on July 6, 2004. Laboratory results for the July 6, 2004 urine specimen were positive for the presence of Temazepam. Dept. Exh. 10-tab A29-30.
5. Respondent took one 5mg tablet of prescribed Valium on July 6, 2004. Respondent took three 5mg tablets of prescribed Valium on July 7, 2004. Dept. Exh. 10-tab A1, A43, A45, A47, A48.
6. Respondent submitted to random urine screening on July 21, 2004. Laboratory results for the July 21, 2004 urine specimen were positive for the presence of Temazepam and Oxazepam. Dept. Exh. 10-tab A32-33.
7. Respondent submitted to random urine screening on July 30, 2004. Laboratory results for the July 30, 2004 urine specimen were positive for the presence of Oxazepam. Dept. Exh. 10-tab A34-35.
8. Respondent submitted to random urine screening on August 6, 2004. Laboratory results for the August 6, 2004 urine specimen were positive for the presence of Oxazepam. Dept. Exh. 10-tab A36-37.
9. On August 10, 2004, respondent's therapist telephoned Bonnie Pinkerton and told her that respondent had missed several appointments. Transcript, p. 8.
10. Respondent submitted to random urine screening on August 11, 2004. Laboratory results for the August 11, 2004 urine specimen were negative for all substances. Dept. Exh. 10-tab A38.
11. Respondent submitted to random urine screening on August 12, 2004. Laboratory results for the August 12, 2004 urine specimen were positive for the presence of Oxazepam. Dept. Exh. 10-tab A39-40.
12. Respondent submitted to random urine screening on August 18, 2004. Laboratory results for the August 18, 2004 urine specimen were positive for the presence of Oxazepam. Dept. Exh. 10-tab A41-42.
13. Respondent's abuse of oxazepam and/or temazepam does, and/or may, affect his practice as a registered nurse. Dept. Exh. 6.
14. Respondent's therapist notified the Department on or about September 8, 2004 that respondent was unable to practice nursing with reasonable skill and safety due to his ongoing substance abuse. Dept. Exh. 10-tab A2

Conclusions of Law and Discussion

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

Gary Savaria held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and 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, 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 Statement of Charges alleges that from about July 2004 through about August 2004 respondent abused or utilized to excess oxazepam and/or temazepam.

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

The **SECOND COUNT, PARAGRAPH 6** of the Statement of Charges alleges that respondent violated a Consent Order dated March 17, 2004, which placed the respondent's registered nursing license on suspension for two months followed by a four-year probationary period. Such disciplinary action was based upon proof of respondent's abuse of Ambien, hydrocodone, oxycontin, oxycodone, clonazepam and/or Roxicodone, diversions of Ambien and/or hydromorphone and falsification of controlled substance records.

The **SECOND COUNT PARAGRAPH 7** of the Statement of Charges alleges that said Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications.

The **SECOND COUNT PARAGRAPH 8** of the Statement of Charges alleges that respondent's conduct constitutes a violation of the terms of probation set forth in the Consent Order dated March 17, 2004.

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...

Respondent did not submit an Answer to the Statement of Charges. Pursuant to § 19a-9-20 of the Regulations of Connecticut State Agencies the Board deems the allegations in the First and Second Counts of the Statement of Charges to be admitted.

Based on its findings, the Board concludes that respondent's conduct as alleged in the First and Second Counts of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that respondent's conduct violates the terms of probation as set forth in the Consent Order dated March 17, 2004. Respondent's conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(b)(5) and 19a-17.

Order

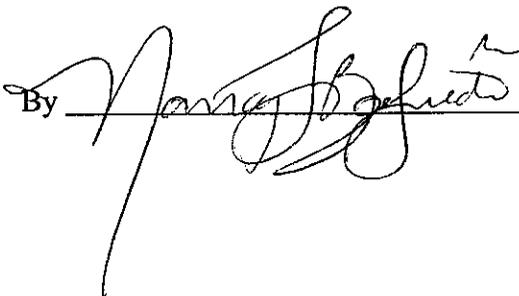
Pursuant to its authority under *Conn. Gen. Stat.* §§ 19a-17 and 20-99, the Board of Examiners for Nursing hereby orders the following:

1. For Count 1 and Count 2 of the Statement of Charges, respondent's registered nurse license number E49287, is revoked effective the date this Memorandum of Decision is signed by the Board.
2. The Board finds the violations set forth in Count One and Count Two are severable and each separate Count warrants the revocation of respondent's license.

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

Dated at Hartford, Connecticut this 19th day of July, 2006.

BOARD OF EXAMINERS FOR NURSING

By  _____