

**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

Department of Public Health

Petition No. 991004-010-078

vs.

Elizabeth D'Agostino, RN, Lic. No. E51287
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 June 30, 2000. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Elizabeth D'Agostino (hereinafter "respondent") which would subject respondent's Registered Nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

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 August 19, 2000, 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 July 19, 2000, scheduling a hearing for August 16, 2000. Dept. Exh. 1. On August 3, 2000, respondent filed a Motion for Continuance of Hearing. Dept. Exh. 3. The Board granted the motion and rescheduled a hearing for October 18, 2000. Dept. Exh. 2.

Respondent was provided notice of the hearing and charges against her. Department Exhibit 1 indicates that the Notice of Hearing and Statement of Charges were served on respondent by deputy sheriff.

The hearing took place on October 18, 2000, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, pp. 3, 22.

Respondent submitted a written Answer to the Statement of Charges. Resp. Exh. A. During the hearing on October 18, 2000, respondent's attorney orally amendment the Answer. Transcript, p. 8.

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. All transcript references refer to the transcript of October 18, 2000.

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 E51287 on September 1, 1988. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 5-B; Rt. Exh. A.
2. Between about March 1999 and April 1999, respondent was employed as a Registered Nurse at Laurel Woods in East Haven, Connecticut. Dept. Exh. 5-A49; Rt. Exh. A.
3. Between about February 1998 and November 1999, respondent abused or utilized to excess crack cocaine. Dept. Exh. 5-A5; Rt. Exh. A; Transcript, p. 46.
4. Respondent's abuse of crack cocaine affects her practice as a Registered Nurse. Dept. Exh. 5-A49; Transcript, pp. 8, 48-49, 63-64.
5. There is insufficient evidence to establish that between February 1998 and November 1999, respondent abused or utilized to excess cocaine, Percocet, Valium, and/or marijuana, and that such use affected her practice as a Registered Nurse.
6. There is insufficient evidence to establish that respondent suffered an emotional disorder or mental illness that prevented respondent from conforming to the standards of the nursing profession.

Conclusions of Law and Discussion

In consideration of the above Findings of Fact, the following conclusions are rendered: Elizabeth D'Agostino 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 the General Statutes of Connecticut §4-177(a) and (b), and §4-182(c). The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut 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 her license as required by the General Statutes of Connecticut §4-182(c).

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

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 . . . (2) illegal conduct, incompetence or negligence in performing usual nursing functions . . . (4) emotional disorder or mental illness; (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals. . . .

PARAGRAPH 3 of the Statement of Charges alleges that between about February 1998 and November 1999, respondent abused or utilized to excess cocaine, crack cocaine, Percocet, Valium and/or marijuana.

Respondent admits abusing or utilizing to excess crack cocaine, but denies abusing or utilizing to excess cocaine, Percocet, Valium or marijuana. Dept. Exh. 5-A5; Rt. A; Transcript pp. 3, 8, 49.

PARAGRAPH 4 of the Statement of Charges alleges that respondent's abuse of cocaine, crack cocaine, Percocet, Valium and/or marijuana does, and/or may, affect her practice as a Registered Nurse.

Respondent admits this allegation to the extent that respondent's abuse of crack cocaine caused her to have poor work attendance. Respondent, however, denies that cocaine, Percocet, Valium and marijuana affected her practice as a Registered Nurse since respondent did not abuse or utilized to excess any of these drugs. Rt. Exh. A; Transcript pp. 8, 49, 73.

PARAGRAPH 5 of the Statement of Charges alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-99 (b), including but not limited to

- a. §20-99(b)(2);
- b. §20-99(b)(4); and/or,
- c. §20-99(b)(5).

Respondent denies this charge. Rt. Exh. A.

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraphs 3 and 4 of the Statement of Charges, that respondent abused crack cocaine and that this abuse affected her practice as a Registered Nurse, is proven by a preponderance of the evidence presented. The

Board further concludes that said conduct constitutes violations of the General Statutes of Connecticut §20-99(b) (2) and (5), as alleged in Paragraph 5a and 5c of the Statement of Charges. Therefore, respondent's Registered Nurse license is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

With regard to allegations in Paragraph 3 and 4 that respondent utilized or abused to excess cocaine, Percocet, Valium and/or marijuana, and that such abuse affected respondent's practice as a Registered Nurse, the Board concludes that the Department did not present sufficient evidence to prove these charges. Therefore, these charges are dismissed.

With regard to the allegations in Paragraph 5b that respondent suffered from an emotional disorder or mental illness, the Board concludes that the Department did not present sufficient evidence to prove this charge. Therefore, Paragraph 5b of the Statement of Charges is dismissed.

Order

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. For Paragraphs 3 and 4 of the Statement of Charges concerning respondent's use of crack cocaine, respondent's Registered Nurse license number E51287 is suspended until April 1, 2001 with a concurrent probation of four years. The probationary period begins on March 1, 2001.
2. 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 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 during the first year of working as a nurse during the probationary period.
 - 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 Q 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 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 Q 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. 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.
- J. Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period.
- K. The therapist reports cited in Paragraph J 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 Q below.
- L. At her expense, respondent shall be responsible for submitting to observed random chain of custody urine and/or blood screens for alcohol and drugs for the entire 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 of Examiners for Nursing 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. Respondent shall be responsible for immediately

notifying the laboratory, her therapist and/or personal physician and the Board of Examiners for Nursing of any drug(s) she is taking.

(1) There must be weekly random alcohol/drug screens during the first, second, and fourth years of the probationary period. There must also be two random alcohol/drug screens per month during the third-year of the probationary period.

(2) 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.

(3) 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)

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

- M. 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.
- N. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine. For that reason, any food substance containing poppy seeds should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine, the ingestion of poppy seeds shall not constitute a defense to such positive screen.
- O. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- P. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of respondent's address.

Q. 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 of Examiners for Nursing, 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 of Examiners for Nursing shall not be a waiver or preclude the Board's right to take subsequent action. The Board of Examiners for Nursing 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 Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board of Examiners for Nursing).
5. This Memorandum of Decision becomes effective on the date signed by the Board of Examiners for Nursing.

The Board of Examiners for Nursing hereby informs respondent, Elizabeth D'Agostino, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Wethersfield, Connecticut this 7th day of February 7, 2001.

BOARD OF EXAMINERS FOR NURSING

By 