STATE OF CONNECTICUT

BOARD OF EXAMINERS FOR NURSING

Department of Public Health

vs.

Jeffrey August, RN, Lic. No. E51781
Respondent

Petition No. 2006-1214-010-112

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 December 28, 2006. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Jeffrey August (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, welfare and safety. On January 17, 2007, 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 January 17, 2007, scheduling a hearing for February 7, 2007. Respondent was provided notice of the hearing and charges against him. The Notice of Hearing and Statement of Charges were delivered by certified mail return receipt requested to respondent's attorney. Dept. Exh. 1.

The hearing took place on February 7, 2007, 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, p. 2

Respondent submitted a written Answer to the Statement of Charges. Resp. Exh. A.

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 E51781 on April 3, 1989. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1-tab 3; Resp. Exh. A.

2. Respondent was employed as a registered nurse at St. Francis Hospital and Medical Center, Hartford Connecticut, since on or about February 1989. Resp. Exh. A-tab 3.

3. Respondent has a history of back pain since the age of eighteen secondary to disc herniation and disc desiccation. Since 1999 respondent has been prescribed medication for pain control. Respondent's use of pain medication escalated to the point that respondent began to divert the controlled substance Dilaudid. Dept. Exh. 1-tab 2; Resp. Exh. A-tab 3.

4. In or about September and October 2006, while working as a registered nurse at St. Francis Hospital and Medical Center, respondent
   a. diverted Hydromorphone (Dilaudid) from hospital stock for his own use.
   b abused or used Hydromorphone to excess.
   c. willfully falsified hospital disposition records pertaining to drugs.
   Dept. Exh. 1-tab 2; Resp. Exh. A-tab 1.

5. Respondent's abuse of Hydromorphone affected his practice as a registered nurse. In or about September and October of 2006, Respondent kept for his own use discards and wastes of leftover Hydromorphone. During this time, Respondent also accessed the Pyxis machine to obtain patient controlled analgesic syringes, withdrawing amounts of Dilaudid and replacing the withdrawn Dilaudid with saline. The tampered syringes were then replaced in the Pyxis machine drawer. Respondent was aware that these tampered syringes could then be dispensed from the machine for use on a patient. Transcript pp. 13, 30-31.

6. From October 20, 2006 to November 15, 2006, respondent underwent intensive outpatient chemical dependency treatment at the Institute of Living, Hartford, Connecticut. Since November 2006, respondent has been receiving individual therapy for chemical dependency and has been participating in Alcoholics Anonymous and the support group Nurses for Nurses. Resp. Exh. A-tabs 2-4

7. Respondent continues under the care of a physician for chronic back pain. Resp. Exh. A-tab 2

Conclusions of Law and Discussion

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

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

The Summary Suspension Order, 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.

PARAGRAPH 2 of the Statement of Charges alleges that in or about September and October 2006, while working as a registered nurse at St. Francis Hospital and Medical Center, Hartford Connecticut respondent:

a. diverted Hydromorphone from hospital stock for his own use;
b abused or used to excess Hydromorphone; and/or
c. willfully falsified hospital disposition records pertaining to drugs.

The Respondent admits the allegations contained in paragraph 2 of the charges.

PARAGRAPH 3 of the Statement of Charges alleges that respondent's abuse of Hydromorphone does, and/or may affect his practice as a registered nurse.

Respondent denies the allegation in paragraph 3. Resp. Exh. A-tab 1.

The Board concludes that the Respondent's abuse of Hydromorphone affected his ability to practice as a registered nurse with reasonable skill and safety. Specifically, Respondent's addiction caused him to divert Hydromorphone from hospital stock for his own personal use. To obtain Hydromorphone, Respondent falsified hospital disposition records and tampered with controlled analgesic syringes, removing a portion of the medication from the syringes and replacing the medication with saline. The tampered syringes were then returned to the dispensing machine for patient care. Respondent was aware that these tampered syringes could be dispensed and administered to patients.

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 carrying out usual nursing functions . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; (6) fraud or material deception in the course of professional services or activities . . . .

Based on its findings and respondent's admission, the Board concludes that respondent's conduct as alleged in Paragraphs 2 and 3 of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to Conn. Gen. Stat. §§ 20-99(b)(2), (5), (6) 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. That the Summary Suspension of respondent's registered nurse license number E51781, ordered on January 17, 2007, is terminated on the effective date of this Memorandum of Decision.
2. That for Paragraphs 2 and 3 of the Statement of Charges, respondent's registered nurse license number E51781, is placed on probation for a period of four (4) years commencing on the effective date of this 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.

   Respondent shall not be employed as a nurse for a personnel provider service, assisted living services agency, homemaker-home health aide agency, or home health care agency, and shall not be self-employed as a nurse for the period of probation.

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 employer reports to be submitted to the Board, by his immediate supervisor during the entire probationary period. Employer reports shall be submitted commencing with the report due on the first business day of month following employment as a nurse. Employer reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.

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 P below.

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

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 P below.

H. At his 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 his therapist. The Board shall be notified in writing by his 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 evaluation reports to be submitted to the Board by his therapist during the entire probationary period. Therapist reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.

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 P below.

L. (1) At his expense, respondent shall be responsible for submitting to observed random chain of custody urine 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 his 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, his therapist, the Board, the Department and his prescribing practitioner of any drug(s) he 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 first and fourth years of the probationary period; and, at least two (2) such random alcohol/drug screens monthly during the second and third years of the 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 P 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 his, 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 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.

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

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

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
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 his 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 on the date signed by the Board of Examiners for Nursing.

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

Dated at Hartford, Connecticut this 16th day of May 2007.

BOARD OF EXAMINERS FOR NURSING

By Joan Dolbeins CRNA, APRN

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 17th day of May 2007, by certified mail, return receipt requested, to:

Jeffrey August
c/o Marilyn Clark Pellett, Esq.
197 Mountain Road
Southington, CT 06489

Certified Mail RRR #91710821333932060299 48

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308

Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

June 2, 2011

Jeffrey August, RN
51 Canal Road
Granby, CT 06035

Re: Memorandum of Decision
Petition No. 2006-1214-010-112
License No. E51781

Dear Mr. August:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective May 16, 2011.

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 a copy of this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during 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

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