

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2003-0709-010-060

vs.

Doreen Flaherty, RN, Lic. No. E52921
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 September 12, 2003. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Doreen Flaherty (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 September 17, 2003, 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 September 17, 2003, scheduling a hearing for October 1, 2003. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent on September 20, 2003. Dept. Exh. 1. At respondent's request, the hearing scheduled for October 1, 2003 was continued. Dept. Exh. 1.

The hearing took place on February 18, 2004, at the Hartford Hospital Newington Campus, Curtis Building Amphitheater, 181 Patricia M. Genovia Drive, Newington, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, February 18, 2004, p. 2.

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

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 E52921 on September 6, 1990. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1-B.
2. Beginning in or about 2001, respondent was employed as a registered nurse at Gladeview Healthcare, Old Saybrook, Connecticut. Respondent worked as a nursing supervisor. Dept. Exh. 1A-8; Resp. Exh. B.
3. From on or about March 2003 to June 2003, while working as a registered nurse at Gladeview Healthcare, respondent diverted for her own personal use the controlled substances morphine and Fentanyl (duragesic patch). Dept. Exh. 1; Transcript, pp. 12-13, 16, 19.
4. On or about March 9 or 10, 2003, while working as a registered nurse at Gladeview Healthcare, respondent ordered Morphine from the pharmacy for a patient who had been discharged from Gladeview Healthcare. Respondent intended to use the Morphine herself to commit suicide. Dept. Exh. 1A-8; Transcript, pp. 11-12.
5. While working as a registered nurse at Gladeview Healthcare, respondent falsified medication control records. Transcript, p. 19.
6. Respondent testified that she self-administered morphine prior to reporting to work, and therefore was impaired while working. Transcript, p. 18.
7. Respondent has a history of depression for which she received in-patient treatment in 1999 and 2001 and began individual therapy in February 2003. Resp. Exh. A, pp. 3-4.
8. From on or about March 15, 2003, respondent underwent in-patient chemical dependency treatment at the Brattleboro Retreat, Brattleboro, Vermont. Since July 2003, respondent has been receiving individual and group therapy for chemical dependency and has continued her individual therapy for depression. Respondent has been participating in Alcoholics Anonymous, Narcotics Anonymous and the support group Nurses for Nurses. Resp. Exh. A, pp. 2-7, 14, 15; Transcript, pp. 14, 20.
9. Respondent has been employed at the Stone Academy, Hamden, Connecticut since July 2003, as an instructor in the Patient Care Technician Program. Resp. Exh. A, p. 8.

Conclusions of Law and Discussion

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

Doreen Flaherty 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 her 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 3** of the Statement of Charges alleges that from approximately December 2002 to June 2003, while working as a nurse supervisor at Gladeview Healthcare, Old Saybrook, Connecticut, respondent:

- a. diverted morphine and/or Fentanyl;
- b. failed to completely, properly and/or accurately document medical or hospital records;
- b. falsified one or more Controlled Substance Receipt Records.

Respondent neither admits or denies these allegations. Resp. Exh. B.

The **FIRST COUNT PARAGRAPH 4** of the Statement of Charges alleges that from approximately December 2002 to June 2003, respondent abused or excessively used morphine, Fentanyl and/or alcohol.

Respondent admits this allegation. Resp. Exh. B.

The **FIRST COUNT PARAGRAPH 5** of the Statement of Charges alleges that respondent's abuse of morphine, Fentanyl and/or alcohol, does, and/or may, affect her practice as a registered nurse.

Respondent denies this allegation. Resp. Exh. B.

The **SECOND COUNT PARAGRAPH 8** of the Statement of Charges alleges that on approximately March 9, 2003, while working as a registered nurse supervisor at Gladeview Healthcare, respondent ordered a stat delivery of morphine for a discharged patient, and that respondent intended to use the morphine herself to commit suicide

Respondent admits this allegation to the extent that she ordered stat delivery of morphine for a discharged patient but denies that her intent was to use the morphine to commit suicide. Resp. Exh. B.

The **SECOND COUNT PARAGRAPH 9** of the Statement of Charges alleges respondent has a long history of major depression and was admitted into the Brattleboro Vermont Retreat for treatment from approximately March 15, 2003 to March 31, 2003.

Respondent admits this allegation to the extent that she was admitted into the Brattleboro Vermont Retreat for treatment from approximately March 15, 2003 to March 31, 2003, but denies having a long history of major depression. Resp. Exh. B.

The **SECOND COUNT PARAGRAPH 10** of the Statement of Charges alleges that respondent emotional disorder and/or mental illness does, and/or may, affect her practice as a registered nurse.

Respondent denies this allegation. Resp. Exh. B.

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; . . . (4) emotional disorder or mental illness; (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 review of the evidence and testimony presented, the Board finds that respondent's conduct as alleged in the First Count and the Second Count of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that respondent's substance abuse and depression, if untreated, may affect her practice as a registered nurse, and that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat. §§ 20-99(b)(2), (4), (5), (6) and 19a-17*.

Order

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

1. That the Summary Suspension of respondent's registered nurse license, number E52921, ordered on September 17, 2003, is vacated on the effective date of this Memorandum of Decision.
2. That for the First Count and the Second Count of the Statement of Charges, respondent's registered nurse license number E52921, is placed on probation for a period of four (4) years.
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 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 her immediate supervisor during the entire probationary period. Employer reports shall be submitted commencing with the report due on the first

business day of the month following employment as a nurse. Employer reports shall be submitted monthly during the entire period 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 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 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 Q below.
- H. At her expense, respondent shall engage in therapy and counseling for chemical dependency and depression 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 evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports shall be submitted monthly during the entire period 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 Q below.
- L. (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

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 first and second years of the probationary period, and two (2) such random alcohol/drug screens monthly during the third and fourth 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 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 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 employment
- P. The Board must be informed in writing prior to any change of 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, 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

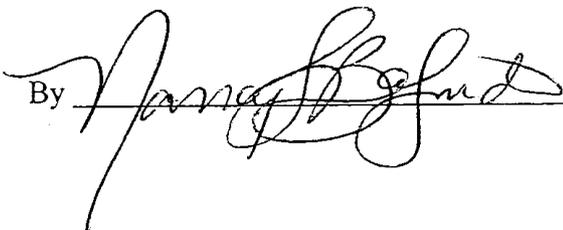
be sent to respondent's address of record (most current address reported to the Office of Practitioner Licensing and Certification of the Department of Public Health or the Board).

5. This Memorandum of Decision becomes effective, and the four (4) year probation of registered nurse license E52921 shall commence, on July 1, 2004.

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

Dated at Hartford, Connecticut this 16th day of June 2004.

BOARD OF EXAMINERS FOR NURSING

By  _____