

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

Department of Public Health

Petition No. 2007-1003-010-078

vs.

Michael Hasselbacher, RN, Lic. No. E53265
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 November 14, 2007. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Michael Hasselbacher (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 November 21, 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 November 21, 2007, and scheduled a hearing for December 5, 2007. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. The Notice of Hearing and Statement of Charges were provided to respondent, in hand, on November 21, 2007 and by first class mail. Dept. Exh. 1.

The hearing took place on December 5, 2007, in Room 1-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing but was not represented by counsel. Transcript, December 5, 2007, p. 4.

Respondent submitted a written and oral Answer to the Statement of Charges. Resp. Exh. 1; Transcript, pp. 11-13.

Following the conclusion of the hearing, the Board ordered that the Summary Suspension of respondent's registered nurse license, ordered on November 21, 2007, be vacated and, pending issuance of this decision, reinstated to probation pursuant to the terms of a Memorandum of Decision dated November 7, 2007.

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.

Allegations

Pursuant to the General Statutes of Connecticut, § 19a-14, the Department of Public Health (hereinafter "the Department") brought the following allegations against Respondent:

Count One

1. Respondent of West Haven, is, and has at all times referenced in this Statement of Charges, the holder of Connecticut registered nurse license number E53265.
2. On or about August 30, 2007, Respondent abused alcohol.
3. Respondent's abuse of alcohol does, and/or may, affect his practice as a registered nurse.
4. 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)(5)

Count Two

5. Paragraphs one and two are incorporated herein by reference as if set forth in full.
6. On February 16, 2005, the Connecticut Board of Examiners for Nursing issued a Memorandum of Decision in Petition Number 2004-0726-010-063 (hereinafter "the Memorandum of Decision") which suspended respondent's license for six months with concurrent probation, to be followed by an additional probationary period of four years. Such disciplinary action was based upon respondent's admitted use of alcohol and violation of probation of a prior Consent Order dated June 2, 2004.
7. Said Memorandum of Decision specifically provided that Respondent must submit to at least two (2) random alcohol/drug screens monthly during the entire probationary period, and that random alcohol/drug screens shall be negative for the presence of alcohol and drugs.
8. On or about August 30, 2007, respondent abused alcohol.
9. On or about August 31, 2007, respondent tested positive for alcohol.

10. Respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Memorandum of Decision, and subjects respondent's license to revocation or other disciplinary action authorized by the General Statutes of Connecticut §§ 19a-17 and 20-99(b).

Findings of Fact

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

1. Respondent admits the allegations in paragraphs 1, 5-7, and 9 of the Statement of Charges. Transcript, pp. 11-13.
2. Pursuant to a Consent Order dated June 2, 2004, the Board ordered that Respondent's nursing license be placed on probation for a period of four years. Such disciplinary action was based upon Respondent's admitted abuse of alcohol that was affecting his performance and overall care for patients. 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 screens that shall be negative for the presence of alcohol and drugs. Dept. Exh. C.
3. On February 16, 2005, the Board issued a Memorandum of Decision in Petition Number 2004-0726-010-063 which suspended respondent's license for six months with concurrent probation, to be followed by an additional probationary period of four years. Such disciplinary action was based upon respondent's admitted use of alcohol and violation of the probationary terms of the Consent Order dated June 2, 2004. Said Memorandum of Decision specifically provided that Respondent must submit to at least two (2) random alcohol/drug screens monthly during the entire probationary period, and that random alcohol/drug screens shall be negative for the presence of alcohol and drugs. Dept. Exh. C-tab A.
4. On August 26, 2007, respondent discontinued his Antabuse medication. Antabuse is used for the treatment of alcohol abuse and alcohol dependence. On August 30, 2007, respondent drank beer while at home. Dept. Exh. C-tab A; Transcript, pp. 17-18.
5. Respondent submitted to random urine screening on August 31, 2007. Laboratory results for the August 31, 2007 urine specimen were positive for alcohol. Dept. Exh. C-tab A.
6. On November 7, 2007, the Board issued a Memorandum of Decision in Petition Number 2007-0411-010-023 that extended the probation of respondent's registered nurse license until August 16, 2010. Such disciplinary action was based upon respondent's abuse use of alcohol during February 2007, in violation of the probationary terms of the Memorandum of Decision dated February 16, 2005. Dept. Exh. B.
7. Respondent has been receiving individual therapy for alcohol dependency and is actively participating in a 12-Step program. Transcript, pp. 19-20, 22.

Conclusions of Law and Discussion

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

Michael Hasselbacher 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.

Respondent admits paragraphs 1, 5-7, and 9 of the Statement of Charges. As for paragraphs 2, 3, and 8 respondent admits he used but did not abuse alcohol and denies alcohol use does, and/or may, affect his practice as a registered nurse. Transcript, pp. 12-13, 17.

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 Statement of Charges, except for paragraph 3, is proven by a preponderance of the evidence presented. The Board concludes that respondent's premeditated nature of choosing to discontinue using prescribed Antabuse medication and the subsequent use of alcohol constitutes abuse of alcohol. The Board further concludes that said conduct violates the terms of probation as set forth in the Memorandum of Decision dated February 16, 2005 and *Conn. Gen. Stat.* § 20-99(b)(5). Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* § 19a-17.

As for paragraph 3 of the Statement of Charges, no evidence was presented to substantiate this allegation.

Respondent has presented sufficient evidence that he has engaged in meaningful substance abuse treatment and that he continues to participate in ongoing treatment, therapy and/or support meetings. The Board finds that respondent at this time can practice nursing with reasonable skill and safety under the terms of this Order.

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. The probation of respondent's registered nurse license number E53265, ordered pursuant to a Memorandum of Decision dated November 7, 2007, is extended until August 16, 2012.
2. The terms of probation set forth in the Memorandum of Decision dated November 7, 2007, shall continue in full force or effect except that paragraph (2)(K)(3) of the Order is modified as follows: There must be at least one (1) such observed random alcohol/drug screen and accompanying laboratory report weekly from August 1, 2008 until August 1, 2009; two (2) such observed random alcohol/drug screens monthly from August 1, 2009 until August 1, 2011; and, one (1) such observed random alcohol/drug screen monthly from August 1, 2011 until the end of the probationary period.
3. 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).
4. 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, Michael Hasselbacher, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 16th day of July 2008.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Buff, d

CERTIFICATION

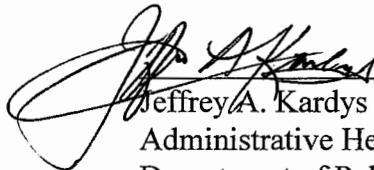
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 17th day of July 2008, by certified mail, return receipt requested and first class mail, to:

Michael Hasselbacher
PO Box 201
West Haven, CT 06516

Certified Mail RRR #9171082133393205510492

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