

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

Department of Public Health

Petition No. 2001-0727-010-048

vs.

Thomas J. Miller, RN, Lic. No. E54556
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 August 3, 2001. Dept. Exh. A. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Thomas J. Miller (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 15, 2001 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. A.

The Board issued a Notice of Hearing dated August 15, 2001, scheduling a hearing for September 5, 2001. Dept. Exh. A.

Respondent was provided notice of the hearing and charges against him. Department Exhibit A indicates that the Notice of Hearing and Statement of Charges were served on respondent by State Marshal on August 17, 2001, and were also delivered by certified mail on August 18, 2001. Transcript, p. 2.

The hearing took place on September 5, 2001 in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing but not represented by counsel. Transcript, p. 3.

During the hearing Respondent orally answered the Statement of Charges. Dept. Exh. A; Transcript, pp. 4-7.

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 E54556 on March 23, 1992. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. A-(C); Transcript, p. 5.
2. Pursuant to a Consent Order dated March 4, 1998 (hereinafter "the 1998 Order"), respondent's registered nurse license was placed on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversions of Morphine, Demerol and Dilaudid. Dept. Exh. A-(A4-A12); Transcript, pp. 5-6.
3. The 1998 Order specifically provided that as a condition of probation respondent was required submit to observed random urine screens, all of which shall be negative for the presence of drugs and alcohol. Dept. Exh. A; Transcript, p. 6.
4. On or about July 9, 2001 respondent relapsed. Respondent began to consume alcohol and subsequently purchased and used heroin. Resp. Exh. 1.
5. Respondent submitted to a random urine screening on July 11, 2001. Laboratory results for the July 11, 2001 urine specimen were positive for the presence of Morphine. Dept. Exh. A-(A13); Transcript, p. 6.
6. Subsequent to his relapse, respondent completed a partial hospital chemical dependency program at Natchaug Hospital, Mansfield Center, Connecticut. In addition respondent has increased his attendance at Alcoholics Anonymous and Narcotics Anonymous. Resp. Exh. 1.

Conclusions of Law and Discussion

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

Thomas J. Miller 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.

PARAGRAPH 2 of the Statement of Charges alleges that on March 4, 1998, the Board ordered a Consent Order in Petition 971216-010-086 placing respondent's nursing license on probation for a period of four years. Such disciplinary action was based on respondent's admitted diversions of Morphine, Demerol and/or Dilaudid.

Respondent admits this charge. Transcript, p. 6.

PARAGRAPH 3 of the Statement of Charges alleges that the 1998 Order specifically provided that respondent submit to observed random urine screens, all of which shall be negative for the presence of drugs and alcohol.

Respondent admits this charge. Transcript, p. 6.

PARAGRAPH 4 of the Statement of Charges alleges that on July 11, 2001, respondent tested positive for morphine.

Respondent admits this charge. Transcript, p. 6.

PARAGRAPH 5 of the Statement of Charges alleges that respondent's conduct as alleged in paragraphs 2 through 4, constitutes violations of the terms of probation as set forth in the 1998 Order.

Based on its findings, the Board concludes that respondent's conduct as alleged in the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes violates the terms of probation as set forth in the 1998 Order. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* §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 E54556, ordered on August 15, 2001, is vacated on the effective date of this Memorandum of Decision.
2. That the probation of respondent's registered nurse license number E54556 as ordered pursuant to the 1998 Order, is extended until April 1, 2005.
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 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 his 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 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 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 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 his 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 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 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 at least one (1) such random alcohol/drug screen weekly until April 1, 2003, and thereafter, at least two (2) such random alcohol/drug screen monthly for the remainder 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 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 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 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 his 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 the date that it is signed by the Board.

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

Dated at Hartford, Connecticut this 5th day of December 2001.

BOARD OF EXAMINERS FOR NURSING

By Nancy DeFuria