



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

August 15, 2012

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Via Email

RE: Patricia Yurkas, RN, E55051

Petition No. 2010-5338

Dear Attorney Gagne and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Board of Examiners for Nursing** in the above-referenced matter.

Sincerely,



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

- c: Lynn A. Rioux, Paralegal Specialist II, Office of the Attorney General
Wendy H. Furniss, Branch Chief, Healthcare Quality and Safety, DPH
Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations, DPH
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**STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING**

In Re: Patricia Yurkas, R.N.

Petition No. 2010-5338

MEMORANDUM OF DECISION

Procedural Background

On April 5, 2012, the Department of Public Health ("Department") filed a Statement of Charges ("Charges") with the Board of Examiners for Nursing ("Board"). Bd. Exh. 1. The Charges allege violations of Chapter 378 of the General Statutes ("Statutes") by Patricia Yurkas ("Respondent") which would subject Respondent's registered nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes. Bd. Exh. 1.

On April 18, 2012, the Charges and a Notice of Hearing were sent to Respondent by certified and first class mail. Bd. Exh. 3.

On May 1, 2012, Respondent filed a written Answer to the allegations. Bd. Exh. 2.

The hearing was held on June 20, 2012. At the hearing, Respondent was represented by Attorney J. William Gagne, Jr. The Department was represented by Attorney Linda Fazzina.

At the beginning of the hearing, Respondent moved for a continuance to renegotiate and execute a consent order with the Department in lieu of a hearing. Tr., p. 6. The Department objected based on the Board's rejection of a previous consent order offered by the Department. Tr., p. 6-7. The Department also objected to Respondent's motion because the Department was not authorized to negotiate another consent order and the Board made it clear that it wanted to hear the matter. Tr., pp. 6-7. The Board denied the motion for a continuance. Tr., p. 7.

Following the close of the record on June 20, 2012, the Board conducted fact finding.

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. The Board relied on the training and experience of its members in making its findings of fact and conclusions of law. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

Allegations

1. In paragraph one of the Charges, the Department alleges that Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut registered nurse license number E55051.
2. In paragraph two of the Charges, the Department alleges that at all relevant times, Respondent was employed as a nurse at Smith House Health Care Center ("Smith House") of Stamford, Connecticut.
3. In paragraph three of the Charges, the Department alleges that from in or about December 2009 through in or about March 2010 while working as a nurse at Smith House, Respondent failed to completely, properly and/or accurately document medical records on one or more occasions in connection with the administration of controlled substances to one or more residents.
4. In paragraph four of the Charges, the Department alleges that the above facts constitutes grounds for disciplinary action pursuant to § 20-99(b)(2) of the Statutes.

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut registered nurse license number E55051. Bd. Exh. 2.
2. At all relevant times, Respondent was employed as a nurse at Smith House of Stamford, Connecticut. Bd. Exh. 2.
3. From in or about December 2009 through on or about March 1, 2010 while working as a nurse at Smith House, Respondent failed to completely, properly and/or accurately document medical records on one or more occasions in connection with the administration of controlled substances to one or more residents. Dept. Exh. 1, pp. 4-7, 11, 17-23, 28-30, 35-38; Dept. Exh. 2; Tr. pp. 28-29, 31, 46, 52-54, 56-57.
4. Respondent was aware of how to correctly document the administration of narcotics in the medication administration records. Tr. pp. 51-53.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790, 819-821 (2008). The Department sustained its burden of proof with regard to all of the allegations contained in the Charges.

Section 20-99 of the Statutes provides, in pertinent part, that:

(a) The Board . . . 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;

The Department relied on the testimony of Jolanta Gawinski, Program Supervisor for the Department, and of Respondent to prove its case. The Department also entered into the record a Drug Control Report prepared by Drug Control Agent Rodrick Marriott, Drug Control Division, of the Department of Consumer Protection. Dept. Exh. 1. Agent Marriott's report covers the period from March 8, 2010 through April 5, 2010. Dept. Exh. 1, pp. 4-7. The report includes an investigation of Smith House's controlled substance records from December 9, 2010 through March 14, 2010. Dept. Exh. 1, pp. 16-44. These records document when a controlled substance was administered to a patient and which nurse performed the administration. Dept. Exh. 1. The report also includes several statements of Smith House employees regarding the Respondent and the loss of the controlled substances. Dept. Exh. 1, pp. 9-11, 15, 33. Over Respondent's objection that the report was hearsay and therefore inadmissible (Tr. pp. 8-9), the report was entered into the record after the Board ruled that this report is admissible as a business record and found that the report had sufficient indicia of reliability to be given substantial weight. *Addona v. Adm'r, Unemployment Comp. Act*, 121 Conn. App. 355, 363 (2010); Tr. pp. 11-13.

Ms. Jolanta Gawinski testified that the medication administration records ("MAR") contained within the Drug Control Report do not have the required signature of Respondent to document that narcotics were administered. Tr. pp. 28-29, 31. The MAR illustrates numerous days in which Respondent did not properly document the administration of narcotics. Dept. Exh. 1, pp. 4-7, 11, 17-23, 28-30, 32, 34-38.

Respondent made several statements indicating that she is aware of her improper documentation. Respondent's undated, notarized letter acknowledges that she improperly documented the administration of narcotics to her patients. Dept. Exh. 2. The letter was sent to Jolanta Gawinski in response to Ms. Gawinski's request for Respondent to summarize the statements made by Respondent during their meeting regarding the improper documentation.

Tr. p. 22. The letter describes Respondent's working conditions, relationships with her superiors, and the failure to properly document the medication records. Dept. Exh. 2. Respondent conceded in the letter that her documentation mistakes "could have had a costly outcome to one of [her] patients," for which she takes full responsibility. Dept. Exh. 2. Additionally, Respondent admits that her documentation of controlled substances throughout the time period alleged by the Department was insufficient and not completed in a timely manner. She attributed her negligence in carrying out her usual nursing functions to a lack of staffing at the facility for several months and her poor working relationship with the director of nurses.

Tr. p. 57. Respondent testified that she signed out medication on the narcotic sheet but failed to initial the MAR to document that the medication had been administered. Tr. pp. 42, 53. As a registered nurse with 20 years of experience, Respondent testified that she was aware of the purpose of the controlled substance disposition record and the proper way to document the narcotic administration on the corresponding MAR. Tr. pp. 51-53.

The Board concludes that Respondent's conduct as alleged in the Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(2) and (5) and 19a-17 of the Statutes. However, the Board finds that Respondent can practice nursing with reasonable skill and safety under the terms of this Order.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, with respect to registered nurse license number E55051 held by Patricia Yurkas, as follows:

1. Respondent's license shall be placed on probation for a period of six months under the following terms and conditions. If any of the conditions of probation are not met, Respondent's registered nurse license may be subject to disciplinary action pursuant to § 19a-17 of the Statutes.
 - A. 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 month following employment as a nurse. Employer reports shall be submitted monthly.

- B. The employer reports cited in Paragraph A 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 F below.
- C. In the event Respondent is not employed as a nurse for periods of 30 consecutive days or longer, she shall notify the Department in writing. Such periods of time shall not be counted in reducing the probationary period covered by this Order and such terms shall be held in abeyance. During such time period, Respondent shall not be responsible for complying with the terms of probation of this order. In the event respondent resumes the practice of nursing, she shall provide the Department with 15 days prior written notice.
- D. During the 6 month probationary period respondent, at her expense, shall successfully complete a course in medication administration and documentation pre-approved by the Board. Respondent shall provide proof to the satisfaction of the Board of her successful completion of the course within 30 days of completion.
- E. The Board must be informed in writing prior to any change of address.
- F. All communications, 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
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- 2. 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 Statutes, 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).

This Memorandum of Decision becomes effective, and the six-month probation of registered nurse license number E55051 shall commence as of the date of signature.

The Board of Examiners for Nursing hereby informs Respondent, Patricia Yurkas, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 15th day of August, 2012.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard, D.N.Sc.
Patricia C. Bouffard, D.N.Sc., Chairperson

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 15th day of August 2012, certified mail return receipt requested mail to:

J. William Gagne, Jr., Esq.
15 North Main Street
West Hartford CT 06107

and E-Mail to:

Matthew Antonetti, Principal Attorney
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Janice E. Wojick, Hearings Liaison