

Wendy Smith
209 Chestnut Hill Road
Trumbull, CT 06611

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

State of Connecticut
Department of Public Health

vs.

Wendy Smith, RN
Registered Nurse License No. E57534
Respondent.

CASE PETITION NO. 960725-10-053

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 26, 1996 (Department Exhibit 1). The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Wendy Smith (hereinafter the "Respondent") which would subject the 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 the continued nursing practice of the Respondent presented a clear and immediate danger to public health and safety. On August 28, 1996, the Board ordered, pursuant to its authority under §19a-17(c) of the General Statutes of Connecticut, that the Registered Nurse license of the Respondent be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges (Department Exhibit 1).

The Board issued a Notice of Hearing dated August 28, 1996, scheduling a hearing for September 18, 1996 (Department Exhibit 1). The hearing was rescheduled and took place on January 22, 1997, in Conference Room C, 470 Capitol Avenue, Hartford, Connecticut. (Department Exhibit 2)

The Respondent was provided notice of the hearing and charges against her (Department Exhibits 1, 2). The Respondent was present during the hearing but was not represented by counsel. (Hearing Transcript, January 22, 1997, pp. 2-4)

The Respondent submitted a written answer to the Statement of Charges. (Department Exhibit 3)

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.

FACTS

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

1. Wendy Smith, hereinafter referred to as the Respondent, was issued registered nurse license, number E57534, on June 23, 1995. (Department Exhibit 1-B)
2. At all times referenced in the Statement of Charges the Respondent was the holder of registered nurse license number E57534. (Answer: Department Exhibit 3)
3. Beginning on or about 1995, the Respondent was employed as a registered nurse at Mariner Health Care of Southern Connecticut, Ansonia, Connecticut. (Department Exhibit 1-A2, 1-A28)
4. During June and July 1996, while working as a registered nurse at Mariner Health Care of Southern Connecticut, the Respondent diverted from the infusion pumps of patients, the controlled substance Morphine. (Department Exhibit 1-A) (Answer: Department Exhibit 3)

5. While on duty as a registered nurse at Mariner Health Care of Southern Connecticut, the Respondent self administered the Morphine that she had diverted. (Hearing Transcript, January 22, 1997, p. 11)
6. While on duty as a registered nurse at Mariner Health Care of Southern Connecticut, the Respondent recorded in patient medical records the infusion pump readings that indicated the amount of Morphine received by a patient. The readings recorded by the Respondent included the amounts not received by patients, but which were diverted for her own use. (Hearing Transcript, January 22, 1997, p. 31)
7. The Respondent has a history of alcohol abuse as well as use of the controlled substances Cocaine and Percocet. (Hearing Transcript, January 22, 1997, pp. 8-12)
8. Since on or about July 12, 1996, the Respondent has been receiving individual therapy for chemical dependency and has been participating in Alcoholics Anonymous and the support group Nurses for Nurses. (Respondent's Exhibit A-2) (Hearing Transcript, January 22, 1997, pp. 19-21)
9. The Respondent continues to be employed at Mariner Health Care of Southern Connecticut, Connecticut, but not in a nursing position. (Respondent's Exhibits A)

DISCUSSION AND CONCLUSIONS

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

Wendy Smith 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 sufficiently provided legal notice as mandated by the General Statutes of Connecticut §4-177, §4-182 and §19a-17. The hearing was held in accordance with

Chapters 54 and 368a of the General Statutes of Connecticut as well as §19-2a-1 through §19-2a-30 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges and the hearing process provided the Respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of her license as required by the General Statutes of Connecticut §4-182(c).

PARAGRAPH 3 of the Statement of Charges alleges that in or about June and July 1996, while employed as a registered nurse at Mariner Health Care of Southern Connecticut, Ansonia Connecticut, the Respondent:

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

The Respondent admits paragraph 3a but denies paragraphs 3b and 3c. (Answer: Department Exhibit 3)

PARAGRAPH 4 of the Statement of Charges alleges that in or about June and July 1996, while working as a registered nurse at Mariner Health Care of Southern Connecticut, the Respondent abused or excessively utilized the controlled substance Morphine.

The Respondent neither admits nor denies this charge. (Answer: Department Exhibit 3)

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes “...(2) illegal conduct, incompetence or negligence in performing 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, the Board concludes that the Respondent’s conduct as alleged in Paragraphs 3a, 3b, and 4 of the Statement of Charges is proven and that said conduct constitutes violations of the

General Statutes of Connecticut §20-99(b)(2) and (5). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The Board concludes the Department did not provide sufficient evidence to prove the allegation in Paragraph 3c. Therefore, Paragraph 3c of the Statement of Charges is dismissed.

In determining appropriate sanctions in this matter the Board may consider, in addition to the charges upon which there is a finding of guilt, any evidence presented during the hearing which is relevant to the Respondent's ability to practice nursing in accordance with the accepted standards of the nursing profession.

ORDER

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. That for Paragraphs 3a, 3b and 4 of the Statement of Charges, the Respondent's registered nurse license, No. E57534, is suspended for a period of six (6) months and placed on concurrent probation for a period of four (4) years.
2. If any of the following conditions of suspension and probation are not met, the Respondent's registered nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. The Respondent shall not work as a nurse during the six (6) month period of suspension.
 - B. During the period of probation which follows the suspension, the Board shall pre-approve the Respondent's employment or change of employment within the nursing profession.

- C. The 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.
- D. The 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 returning to the practice of nursing following the period of suspension.
- E. If employed as a nurse during the probationary period which follows the suspension, the Respondent shall cause monthly employer reports to be submitted to the Board by her immediate supervisor. Employer reports shall commence with the report due on the first business day of the month following employment as a nurse.
- F. The employer reports cited in Paragraph E above shall include documentation of the 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.
- G. Should the Respondent's employment as a nurse be voluntarily or involuntarily terminated, the Respondent and/or her employer shall notify the Board, within seventy-two (72) hours, of such termination.
- H. At her expense, the Respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist during the entire probationary period.
- I. The 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. The Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports are due commencing with the report due on the first business day of June 1996.
- K. The therapist reports cited in Paragraph J above shall include documentation of dates of treatment, and an evaluation of the 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 her expense the Respondent shall be responsible for submitting to random urine screens for alcohol and drugs for the entire probationary period, as ordered by her therapist, and/or personal physician, and/or the Board of Examiners for Nursing. Random alcohol/drug screens shall be legally defensible in that chain of custody procedures must be followed throughout the screening process. The 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.

Random alcohol/drug screening shall be performed on the following schedule:

1. At least one (1) random alcohol/drug screen monthly until October 15, 1997.
2. At least two (2) random alcohol/drug screens monthly from October 15, 1997 until April 15, 1999.
3. At least one (1) random alcohol/drug screen monthly from April 15, 1999 until April 15, 2001.

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.

Random alcohol/drug screens must include testing for the following substances:

- Amphetamines
- Barbiturates
- Benzodiazepines
- Cannabinoids (THC Metabolites)
- Cocaine
- Meperidine (Demerol)
- Methadone
- Methaqualone
- Opiates (Metabolites)
- Phencyclidine (PCP)
- Propoxyphene
- Ethanol (alcohol)

Reports of random alcohol and drug screens shall be submitted directly to the Board, at the address cited in Paragraph Q below, by the Respondent's therapist, personal physician or the testing laboratory.

- M. The 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. The Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.
- N. The Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine. For that reason, any food substance containing poppy seeds should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine, the ingestion of poppy seeds 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:

**DEPARTMENT OF PUBLIC HEALTH
BOARD OF EXAMINERS FOR NURSING
LEGAL OFFICE - MONITORING & COMPLIANCE**

410 Capitol Avenue, MS #12LEG

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, will constitute a violation of probation which will be cause for an immediate hearing on charges of violating this Order. Any finding that the Respondent has violated this Order will subject the 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 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 the Respondent's address of record (most current address reported to the Licensure and Registration Section, Division of Health Systems Regulation, Department of Public Health or the Board of Examiners for Nursing).
5. This Memorandum of Decision becomes effective on the date it is signed by the Board of Examiners for Nursing.

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

Dated at Hartford, Connecticut this 16th day of April 1997.

BOARD OF EXAMINERS FOR NURSING

By Nancy J. Beford