

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 991126-010-093

vs.

Matthew Berube, RN, Lic. No.E58725
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 dated October 11, 2001. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Matthew Berube (hereinafter "respondent") which would subject respondent's Registered Nurse license to disciplinary action pursuant to the General Statutes of Connecticut. On February 4, 2002, the Department filed an Amended Statement of Charges.

Based on the allegations in the Amended 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 March 1, 2006, 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.

The Board issued a Notice of Hearing dated March 1, 2006, scheduling a hearing for March 15, 2006. Bd. Exh. 2.

Respondent was provided notice of the hearing and charges against him. Board Exhibit 2 indicates that the Notice of Hearing and Amended Statement of Charges were delivered by certified mail to respondent and respondent's attorney.

Pursuant to respondent's request, the hearing scheduled for March 15, 2006 was continued to January 17, 2007. Bd. Exh. 3.

On January 10, 2007, the Department filed a Motion to Amend the Statement of Charges along with a Second Amended Statement of Charges ("the Charges"), which the Board granted. Dept. Exh. 1, Tab 1; Board Exh. 1.

The hearing took place on January 17, 2007, at Hartford Hospital – Newington Campus, 181 Patricia M. Genova Drive, Newington, Connecticut. A second day of hearing was held on March 7, 2007, at the Hartford Hospital, Newington Campus, Newington, Connecticut.

Respondent was present and represented by counsel during each day of hearing. Tr., 1/17/07, p. 2.; Tr., 3/7/07, p. 2.

Respondent submitted a written Answer to the Second Amended Statement of Charges. Resp. Exh. E.

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 E58725 in 1996. Respondent was the holder of said license at all times referenced in the Statement of Charges. Resp. Exh. E.; Tr., 1/17/07, p. 13.
2. On or about March 5, 1999, respondent was employed as a registered nurse at St. Francis Hospital. Resp. Exh. G.
3. On or about July 30, 2001, respondent pleaded no contest to the illegal conduct of firing a .22 caliber rifle into the back of the head of his wife, CB. Resp. Exh. E.
4. Respondent was holding the firearm when the gun discharged. Tr., 3/7/07, pp 31-32.
5. On or about July 30, 2001, respondent pleaded no contest to the illegal conduct of shooting his wife while she was holding their six-week old infant, thereby endangering his infant daughter. Resp. Exh. E.
6. On or about July 30, 2001, respondent pleaded no contest to the illegal conduct of removing the serial number and sawing off the barrel of the rifle used in the above referenced shooting. Resp. Exh. E.; Tr., 3/7/07, p. 60.
7. On or about March 5, 1999, after CB received a gunshot wound to her head, respondent encouraged his wife to sit up, inserted an IV line into her arm, and flushed the line. Respondent also called 9-1-1. Tr., 3/7/07, p. 33; Dept. Exh. 1-tab 4, p.9; Dept. Exh. 1-tab 5, p.2; Resp. Exh. E.

Conclusions of Law and Discussion

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

Matthew Berube 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.

In **PARAGRAPH 2** of the Charges, the Department alleges that on or about July 30, 2001, respondent pleaded no contest to the illegal conduct of firing a .22 caliber rifle into the back of the head of his wife, CB. Respondent admits this charge. Resp. Exh. E.

In **PARAGRAPH 3** of the Charges, the Department alleges that on or about July 30, 2001, respondent pleaded no contest to the illegal conduct of shooting his wife while she was holding their six-week old infant, thereby endangering his infant daughter. Respondent admits this charge. Resp. Exh. E.

In **PARAGRAPH 4** of the Charges, the Department alleges that on or about July 30, 2001, respondent pleaded no contest to the illegal conduct of removing the serial number and sawing off the barrel of the rifle used in the above referenced shooting. Respondent admits this charge. Resp. Exh. E.

In **PARAGRAPH 7** of the Charges, the Department alleges that on or about March 5, 1999, respondent fired a gun in his bedroom at point-blank range, resulting in a gunshot wound of the head to CB. While still at home and without any communication with any health care provider, respondent treated CB for the gunshot wound by inserting an IV line into her arm, and flushing the line. Respondent admits all of this charge except that he denies that he encouraged CB to sit up.

In **PARAGRAPH 8** of the Charges, the Department alleges that respondent's insertion of the IV line, flushing the line, and encouragement to sit up were contraindicated. Respondent admits that he inserted and flushed the IV line, but denies that he encouraged her to sit up.

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 performing usual nursing functions . . .

Based on its findings, the Board concludes that respondent's conduct as alleged in Count One Paragraphs 2, 3, and 4, and part of the allegations contained in Count Two Paragraphs 7, and 8 of the Second Amended Statement of Charges is proven by a preponderance of the evidence presented. The Board concludes that said conduct as alleged in Count One constitutes a violation of *Conn. Gen. Stat.* §20-99(b). The Board further concludes that said conduct as alleged in Count Two constitutes a violation of *Conn. Gen. Stat.* § 20-99(b)(2). The Board concludes, based on the evidence presented, that respondent is not able to practice with reasonable skill and safety and said conduct, as alleged in Counts One and Two, fails to conform to the accepted standards of the nursing profession. 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 for Count One, Paragraphs 2, 3, and 4, and Count Two, Paragraphs 7, 8, and 9, of the Second Amended Statement of Charges, respondent's Registered Nurse license, number E58725, is revoked effective the date this Memorandum of Decision is signed by the Board of Examiners for Nursing.

2. The Board finds the violations set forth in Count One and Count Two are severable and each separate Count individually warrants the revocation of respondent's license.

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

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

BOARD OF EXAMINERS FOR NURSING

By Nancy S. Befudo ⁽²⁾

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CERTIFICATION

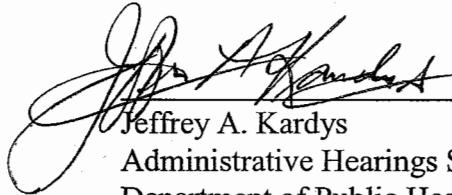
I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 17th day of JANUARY 2008, by certified mail, return receipt requested, to:

Louis B. Todesco, Esq.
Murtha Cullina LLC
Two Whitney Avenue
PO Box 704
Hartford, CT 06503-0704

Certified Mail RRR #9171082133393187047399

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