



# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

August 15, 2012

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Via Email

RE: Leslie Matejek, RN, E58736

Petition No. 2011-896

Dear Attorney Hillis 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  
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**STATE OF CONNECTICUT  
BOARD OF EXAMINERS FOR NURSING**

Leslie Matejek, R.N.  
License No. E58736

Petition No. 2011-896

**MEMORANDUM OF DECISION**

*Procedural Background*

On September 30, 2011, the Department of Public Health ("Department") filed a Motion for Summary Suspension ("Motion") and a Statement of Charges ("Charges") with the Board of Examiners for Nursing ("Board"). Bd. Exh. 1. The Statement of Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("Statutes") by Leslie Matejek ("Respondent") which would subject Respondent's registered nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes.

Based on the allegations in the Charges and the affidavits and reports accompanying the Motion, the Board found that Respondent's continued nursing practice presented a clear and immediate danger to public health and safety and on October 19, 2011, ordered pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, that Respondent's license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges ("Order"). Bd. Exh. 2.

On October 19, 2011, the Charges, Order, and a Notice of Hearing were sent to Respondent by certified and first class mail, and they were served by state marshal on October 25, 2011. Bd. Exhs. 1-3.

On December 8, 2011, Respondent filed an Answer to the Charges. Bd. Exh. 8.

After several continuance requests were granted (Bd. Exhs. 4-6), the hearing was held on April 4, 2012. Respondent appeared and was represented by Attorney Michael Hillis; the Department was represented by Attorney Diane Wilan. Following the close of the record on April 4, 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 (1994).

*Allegations*

1. In paragraphs one and five of the Charges, the Department alleges that Respondent of Derby, CT, is, and has been at all times referenced in the Charges, the holder of Connecticut registered nurse license number E58736.

*Count One*

2. In paragraph two of the Charges, the Department alleges that during approximately August 2011, Respondent abused or utilized to excess morphine.
3. In paragraph three of the Charges, the Department alleges that Respondent's abuse of morphine does, and/or may, affect her practice as a registered nurse.
4. In paragraph four of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §20-99(b) of the Statutes, including but not limited to §20-99(b)(5).

*Count Two*

5. In paragraph six of the Charges, the Department alleges that on or about January 20, 2010,<sup>1</sup> the Board ordered a Consent Order in Petition Number 2009-0217-010-010 ("Consent Order") that placed Respondent's license on probation for a period of four years. Such disciplinary action was based upon Respondent's admitted falsification of a prescription for Oxycontin presented to the pharmacy at Griffin Hospital.
6. In paragraph seven of the Charges, the Department alleges that subsequently, the Consent Order in Petition Number 2009-0217-010-010 was modified to extend Respondent's probation by one year. Said Modification of Consent Order in Petition Number 2010-5380 was ordered by the Board on June 15, 2011.
7. In paragraph eight of the Charges, the Department alleges that said Consent Order specifically provided that Respondent shall submit to observed random urine screens, which shall be negative for the presence of drugs and alcohol.
8. In paragraph nine of the Charges, the Department alleges that on or about August 8, 2011, Respondent tested positive for morphine at a level of 436 ng/ml.
9. In paragraph ten of the Charges, the Department alleges that on or about August 16, 2011, Respondent tested positive for morphine at a level of 440 ng/ml.
10. In paragraph eleven of the Charges, the Department alleges that Respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Consent Order, and subjects Respondent's license to revocation or other disciplinary action authorized by §§19a-17 and 20-99(b) of the Statutes.

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<sup>1</sup> The January 20, 2009 date was a typographical error. The correct date is January 20, 2010. Tr. pp. 14, 20.

### ***Findings of Fact***

1. Respondent of Derby, CT, is, and has been at all times referenced in the Charges, the holder of Connecticut registered nurse license number E58736. Bd. Exh. 8, Tr. p. 5.
2. On or about January 20, 2010,<sup>2</sup> the Board ordered a Consent Order in Petition Number 2009-0217-010-010 that placed Respondent's license on probation for a period of four years. Such disciplinary action was based upon Respondent's admitted falsification of a prescription for Oxycontin presented to the pharmacy at Griffin Hospital. Dept. Exh. 1, pp. 1-3, 8-18; Tr. p. 6.
3. The Consent Order in Petition Number 2009-0217-010-010 was modified to extend Respondent's probation by one year due to Respondent's three positive screens for oxycodone on August 3, August 16, and September 14, 2010. Said Modification of Consent Order in Petition Number 2010-5380 was ordered by the Board on June 15, 2011. Dept. Exh. pp. 1-2, 4-7; Tr. pp. 6-7.
4. The Modified Consent Order specifically provided that Respondent shall submit to observed random urine screens, which shall be negative for the presence of drugs and alcohol. Bd. Exh. 8; Dept. Exh. pp. 4-7; Tr. p. 7.
5. The cutoff level for a positive morphine screen is 300 ng/ml. Dept. Exh. 1, pp. 19-20.
6. On or about August 8, 2011, Respondent tested positive for morphine at a level of 436 ng/ml. Dept. Exh. 1, pp. 1-3; Tr. p. 16.
7. On or about August 16, 2011, Respondent tested positive for morphine at a level of 440 ng/ml. Dept. Exh. 1, pp. 1-3; Tr. p. 16.
8. There is insufficient evidence to establish that Respondent abused or utilized morphine to excess during August 2011. Tr. pp. 17-18, 22, 24, 34; Dept. Exh. 1, pp. 25-26.
9. There is insufficient evidence to establish that Respondent abused or utilized morphine to excess during August 2011; therefore, Respondent's practice as a registered nurse is not affected by an abuse of morphine. Tr. pp. 17-18, 22, 24, 34; Dept. Exh. 1, pp. 25-26.

### ***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 (2008).

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<sup>2</sup> The January 20, 2009 date was a typographical error. The correct date is January 20, 2010. Tr. pp. 14, 20.

The Department sustained its burden of proof with regard to all of the allegations contained in the Charges, except for the allegations contained in paragraphs two and three.

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 standard . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; . . . .

The cutoff level for a positive morphine screen is 300 ng/ml. Dept. Exh. 1, pp. 19-20. Respondent's lab results for opiate levels on August 8 and August 16, 2011 were 436 ng/ml and 440 ng/ml, respectively. Dept. Exh. 1, pp. 1-3, Tr. p. 16. The Department's witness, Bonnie Pinkerton, probation monitor, testified that despite Respondent's "adamant denials" that she had ingested any opiates or poppy seeds, Respondent's screens were positive for morphine. Dept. Exh. 1, pp. 1, 3, 19-20, 22-23; Tr. p. 16. Since Respondent had a similar experience with positive urine screens for oxycodone in 2010, Respondent requested DNA testing to be performed on the August 8, 2011 specimen to confirm that the opiates levels were accurate and/or were obtained from Respondent's specimen. Tr. p. 16. As was the case in 2010, Clinical Lab Partners at Hartford Hospital was asked to perform the additional tests. Tr. p. 15. Ms. Pinkerton further testified that the tests were unsuccessful in 2010 (Dept. Exh. 2) and the laboratory reported similar results in 2011. Tr. p. 17. Ms. Pinkerton explained that DNA was extracted from Respondent's urine sample for DNA typing analysis; however, it was not possible to compare the specimen obtained on August 8, 2011, with a previously drawn peripheral blood sample from Respondent because of "the possible presence of interfering substances." Tr. pp. 17, 34; Dept. Exh. 1, pp. 25-26. After the DNA was extracted, there was not a sufficient supernatant (the liquid separated from the solids in the specimen) remaining to determine what were those "possible interfering substances." Dept. Exh. 1, pp. 25-26, Tr. p. 34.

Respondent also testified. She contradicted her previous denials to Ms. Pinkerton about not ingesting any poppy seeds; and, instead testified that she had eaten poppy seed bread over a

month before she received the positive urine screens for morphine. Tr. p. 25. However, Respondent consistently denies that she ingested any opiates or alcohol. Tr. pp. 25-26. She also testified that a doctor at Hartford Hospital informed her that preservatives in the test tubes were possibly the “interfering substances” that adversely affected the DNA testing. Tr. p. 31.

Based on the laboratory’s inability to perform the additional tests, and the inconclusive results of the tests that were performed, a reasonable explanation for Respondent’s positive opiate test results could not be determined.

Thus, the Board concludes that, while ingestion of poppy seeds is not a defense, the Department failed to establish by a preponderance of the evidence that during August 2011, Respondent abused or utilized morphine to excess. Based on such finding, the Board further concludes that Respondent’s conduct does not warrant any additional disciplinary action pursuant to §§20-99(b)(5) and 19a-17 of the Statutes. Therefore, 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 E58736 held by Leslie Matejek, the following:

1. The suspension of Respondent’s license shall remain in place until this Memorandum of Decision is signed and becomes effective.
2. Following such suspension, Respondent’s license shall remain on probation under the terms and conditions of the Modified Consent Order, dated June 15, 2011, which shall remain in full force and effect, until February 1, 2015.
3. This Memorandum of Decision becomes effective as of the date of signature.

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

Dated at Hartford, Connecticut this 15<sup>th</sup> day of August, 2012.

BOARD OF EXAMINERS FOR NURSING

By Patricia C Bouffard, D.N.Sc.  
Patricia 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 15<sup>th</sup> day of August 2012, certified mail return receipt requested mail to:

Michael Hillis, Esq.  
129 Whitney Avenue  
New Haven CT 06510

*and E-Mail to:*

Matthew Antonetti, Principal Attorney  
Legal Office, MS#12LEG  
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P. O. Box 340308  
Hartford CT 061343-0308

  
Janice E. Wojick, Hearings Liaison