

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

Ruth Dushay, R.N.  
License No. E60422

Petition No. 2009-20091183

**MEMORANDUM OF DECISION**

*Procedural Background*

On September 3, 2009, the Department of Public Health ("the Department") filed a Motion for Summary Suspension ("Motion") along with a Statement of Charges with the Board of Examiners for Nursing ("the Board"). The Statement of Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("the Statutes") by Ruth Dushay ("Respondent") which would subject respondent's registered nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes. Bd. Ex. 1. In its Motion, the Department alleged that the Respondent's continued practice as a registered nurse "represented a clear and immediate danger to the public health and safety".

According to the official minutes of the Board's September 16, 2010 meeting, the Department presented the Motion to the Board. The Respondent was present, although her legal counsel, Marilyn Clark Pellett, was not. The Board moved to grant the Motion but the result was a tie vote, four in favor and four against. As a result, the Motion was denied and a hearing was scheduled on the Statement of Charges for October 7, 2009. Bd. Ex. 1. Notice of the Hearing and the Statement of Charges were hand delivered to and accepted by the Respondent at the September 16, 2010 Board meeting. Notice was to be sent via mail to the Respondent's legal counsel.

At the Board's October 7, 2009 meeting, the Board was presented with a request from the Respondent for a continuance of the hearing that was take place that day on the Statement of Charges. Bd. Ex. 2. The Board granted the Respondent's request. Bd. Ex. 2; Tr. 10/7/2009, pp. 1-11. The Board also acknowledged receipt of a letter from attorney Marilyn Clark Pellett informing the Board that she no longer represented the Respondent. Bd. Ex. 3. On the record, the Department made an oral motion to renew its previous Motion for Summary Suspension which the Board denied on September 16, 2009. Tr. 10/7/09, p. 3.

According to the official minutes of the Board's September 16, 2009 meeting, the Department presented the Board with a Revised Motion for Summary Suspension ("Revised

Motion") of the Respondent's license. The Respondent was not present and was not represented during the Board's consideration of the Revised Motion. After a presentation by the Department, the Board unanimously found that , based on the allegations in the Amended Statement of Charges ("Amended Charges") and the affidavits and reports accompanying the Revised Motion, Respondent's continued nursing practice presented a clear and immediate danger to public health and safety and ordered, on October 7, 2009, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, and ordered that Respondent's registered nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Amended Charges ("the Order"). Bd. Ex. 4. The Board set the next hearing date for October 21, 2009. Bd. Ex. 4. On October 10, 2009 the Board caused the Notice of Hearing reflecting the October 21, 2009 hearing date, the Summary Suspension Order dated October 7, 2009, and the Amended Charges to be served upon the Respondent by a State Marshal. Bd. Ex. 4.

The hearing scheduled for October 21, 2009, was continued at Respondent's request. Bd. Ex. 5. Notice of the new hearing date, scheduled for January 20, 2010, was sent to the Respondent via certified mail return receipt requested. Bd. Ex. 5. On January 8, 2010, the Respondent filed her Answer to the Amended Charges ("Answer"). Bd. Ex. 7. On January 7, 2010, the Department filed a Motion to Amend the Amended Charges with a Second Amended Statement of Charges ("Second Amended Charges"). The Board granted the Motion to Amend on January 20, 2010. Bd. Ex. 9. On January 19, 2010 the Respondent requested that the hearing scheduled for January 21, 2010 be continued. Bd. Ex. 8. The Board granted the request and set the hearing date for March 3, 2010. Bd. Ex. 8. Notice of the new hearing date was sent to the Respondent via certified mail return receipt requested. Bd. Ex. 8. An additional day of hearing was necessary and set down for May 5, 2010. Bd. Ex. 10. Notice of the additional day of hearing was sent to the Respondent via certified mail return receipt requested. Bd. Ex. 10.

The hearing was held on March 3, 2010 and May 5, 2010. At the hearing, Respondent appeared *pro se*; the Department was represented by Attorney Linda Fazzina. Tr. 03/03/2010 , p. 1. Although Respondent had filed written Answers to the Amended Statement of Charges, and the Second Amended Charges, respondent was permitted to orally answer the Second Amended Charges on the record at the hearing, for clarification purposes. Bd. Ex. 7;

Resp. Ex. A; Tr., 3/3/2010, pp. 18-21. Following the close of the record on May 5, 2010, 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.

### *Allegations*

1. In paragraphs one and six of the Charges, the Department alleges that Ruth Dushay of Monroe, CT is and has been at all times referenced the holder of Connecticut registered nursing license number E60422.

### *Count One*

2. In paragraph two of the Charges, the Department alleges that on or about August 9 and/or September 7, 2009, respondent abused or utilized to excess Tramadol.
3. In paragraph three of the Charges, the Department alleges that prior to September 2009, respondent abused or utilized alcohol to excess on one or more occasions in 2009.
4. In paragraph four of the Charges, the Department alleges that respondent's abuse of alcohol and/or Tramadol does, and/or may, affect her practice as a registered nurse.
5. In paragraph five of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to § 20-99, including but not limited to § 20-99(b)(5) of the Statutes.

### *Count Two*

6. In paragraph seven of the Charges, the Department alleges that on or about February 20, 2008, the Board ordered a Consent Order in Petition Number 2006-1108-010-100 ("the Consent Order") that placed respondent's registered nurse license on probation for four years. Such disciplinary action was based upon allegations that respondent violated the terms of an earlier consent order when her urine screens tested positive for Tramadol and morphine and/or when she reported to work after having ingested alcohol.
7. In paragraph eight of the Charges, the Department alleges that the Consent Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications and that respondent shall inform said health care professional of respondent's substance abuse history.

8. In paragraph nine of the Charges, the Department alleges that the Consent Order also provided that respondent submit to observed random urine screens for drugs and alcohol; that respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking and that all screens be negative for the presence of drugs and alcohol.
9. In paragraph ten of the Charges, the Department alleges that on or about August 9, 2009, respondent tested positive for Tramadol.
10. In paragraph eleven of the Charges, the Department alleges that on or about August 18, 2009, respondent informed the Department that she had no explanation for said positive screen.
11. In paragraph twelve of the Charges, the Department alleges that on or about August 25, 2009, respondent's therapist informed the Department that respondent admitted to the use of Tramadol obtained from a physician who was not informed of respondent's history and/or that respondent did not report her use of Tramadol to her therapist and/or to the laboratory.
12. In paragraph thirteen of the Charges, the Department alleges that on or about August 25, 2009, respondent informed the Department that she had obtained Tramadol from an internet site and/or stated that she recognized her actions as "addict behavior".
13. In paragraph fourteen of the Charges, the Department alleges that on or about September 7, 2009, respondent tested positive for Tramadol.
14. In paragraph fifteen 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.

*Findings of Fact*

1. Ruth Dushay of Monroe, CT is and has been at all times referenced the holder of Connecticut registered nursing license number E60422. Tr., 3/3/2010, p18.
2. On or about August 9 and/or September 7, 2009, respondent abused or utilized to excess Tramadol. Tr., 3/3/2010, pp.18-21.
3. Respondent abused or utilized alcohol to excess on one or more occasions during and prior to September 2009. Dept. Exh. 3 (under seal); Resp. Exhs. H and I (under seal).
4. Upon admission to St. Vincent's Medical Center on September 23, 2009, respondent reported she was experiencing an escalating pattern of abuse with impairment at work and in her personal life. Dept. Exh. 3 – tab1 (under seal).

5. On or about February 20, 2008, the Board ordered the Consent Order that placed respondent's registered nurse license on probation for four years. Such disciplinary action was based on allegations that respondent violated the terms of an earlier consent order when her urine screens tested positive for Tramadol and morphine and/or when she reported to work after having ingested alcohol. Dept. Ex. 1, tabs B1-B10; Tr. 3/3/10, pp. 18-21.
6. The Consent Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications and that respondent shall inform said health care professional of respondent's substance abuse history. Dept. Ex. 1, tab B-3; Tr., 3/3/2010, pp.18-21.
7. The Consent Order also provided that respondent submit to observed random urine screens for drugs and alcohol; that respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking and that all screens be negative for the presence of drugs and alcohol. Dept. Ex. 1, tabs B3 – B4; Tr., 3/3/2010, pp.18-21.
8. On or about August 9, 2009, respondent tested positive for Tramadol. Dept. Ex. 1, tab C; Tr. 3/3/10, pp. 18-21.
9. On or about August 18, 2009, respondent informed the Department that she had no explanation for the positive urine screen result for Tramadol on August 9, 2009. Dept. Exh. 1, tab A1.
10. On or about August 25, 2009, respondent's therapist informed the Department that respondent admitted to the use of Tramadol obtained from a physician who was not informed of respondent's history and/or that respondent did not report her use of Tramadol to her therapist and/or to the laboratory. Tr., 3/3/2010, pp.18-21.
11. On or about August 25, 2009, respondent informed the Department that she had obtained Tramadol from an internet site and/or stated that she recognized her actions as "addict behavior". Dept. Ex. 1, tab A2; Tr., 3/3/2010, pp.18-21.
12. On or about September 7, 2009, respondent tested positive for Tramadol. Dept. Ex. 2, tab A; Tr., 3/3/2010, pp.18-21.

#### ***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); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D.

Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981).

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

Respondent admits the allegations in Count One, paragraphs 1 and 2, and Count Two, paragraphs 6-10, 12-14. Respondent admits that on or about August 9, 2009 and September 7, 2009, she abused or utilized to Tramadol to excess. Respondent also admits that her license was subject to probation pursuant to a Consent Order that required her to refrain from use of controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional and that she was to submit to observed random urine screens the results of which were to be negative for the presence of drugs and alcohol. Respondent admitted that her urine screens on August 9, 2009 and September 7, 2009 were positive for Tramadol; that her therapist informed the Department that she admitted to the use of Tramadol obtained from a physician who was not informed of respondent's history, and that she did not report her use of Tramadol to her therapist and/or to the laboratory. Respondent also admits she informed the Department that she had obtained Tramadol from an internet site and stated that she recognized her actions as addictive behavior.

The only allegations that are disputed are Count One, paragraphs 3 and 4 and Count Two, paragraph 11.

Department sustained its burden of proof concerning the allegation in Count One, paragraph three of the Charges. The medical records of respondent's substance abuse treatment substantiate that prior to September 2009, respondent abused or utilized alcohol to excess on one or more occasions. Respondent's assertion that these records are in error is not credible.

The Department also sustained its burden of proof concerning the allegation in Count One, paragraph four of the Charges, that respondent's abuse of alcohol and/or Tramadol does, and/or may, affect her practice as a registered nurse. The medical records of respondent's substance abuse treatment indicate that respondent acknowledged she was impaired while at work.

With regard to the allegation in Count Two, paragraph eleven of the Charges, the Department sustained its burden of proof. On or about August 18, 2009, respondent informed the Department during a phone conversation that she had no explanation for the positive urine screen result for Tramadol.

The Board concludes that respondent's conduct as alleged in Count One and Count Two is proven by a preponderance of the evidence presented and that said conduct also constitutes a violation of the terms of probation as set forth in a Consent Order dated February 20, 2008. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(5) and 19a-17 of the Statutes.

***Order***

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, with respect to license number E60422 held by Ruth Dushay, as follows:

Respondent's license number E60422 to practice as a registered nurse in the State of Connecticut is hereby revoked.

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

Dated at Hartford, Connecticut this 1st day of December, 2010.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard

Patricia Bouffard, R.N.  
Chairperson

**CERTIFICATION**

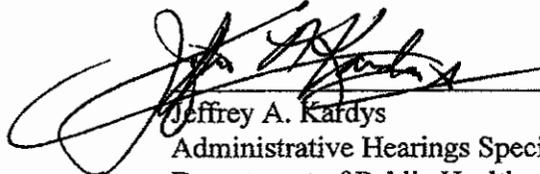
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 2nd day of DECEMBER 2010, by certified mail, return receipt requested, and first class mail to:

Ruth Dushay  
29 Mountainside Drive  
Monroe, CT 06468

Certified Mail RRR #91-7108-2133-3932-0556-3047

and via email to:

Matthew Antonetti, Principal Attorney  
Legal Office  
Department of Public Health  
410 Capitol Avenue, MS #12LEG  
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Jeffrey A. Kardys  
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