

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Health Services v.
Deborah M. McClear, RN, License No. R44431
25 Bretton Street
West Hartford, Connecticut 06119
CASE PETITION NO. 891011-10-043

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Health Services (hereinafter the "Department") with a Statement of Charges dated November 26, 1990. (State Exhibit 2) The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut.

The Board issued a Notice of Hearing dated November 29, 1990. The hearing, scheduled for February 27, 1991, was continued at the Respondent's request. The hearing was rescheduled and heard on March 20, 1991 in Room 112 of the National Guard Armory, Maxim Road, Hartford, Connecticut.

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 and their specialized professional knowledge in evaluating the evidence.

FACTS

Based on the testimony given and the exhibits offered into evidence, the Board made the following findings of fact:

1. Deborah M. McClear, hereinafter referred to as the Respondent, is and was at all times referenced in the Statement of Charges the holder of Registered Nurse License Number R44431.
(Respondent Exhibit A)

2. Pursuant to the General Statutes of Connecticut, Section 4-182(c), the Respondent was provided full opportunity prior to the institution of agency action to show compliance with all the terms for the retention of her license. (State Exhibit 1)

3. The Respondent was aware of the time and location of the hearing. State Exhibit 2 indicates that notice of the location and time of this hearing were delivered by certified mail to the Respondent.

4. The Respondent was present at the hearing and was represented by counsel. The Respondent filed an answer to the Statement of Charges. (Respondent Exhibit A)

5. The Respondent was employed as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut, on May 15, 1989 and at times subsequent thereto. (Respondent Exhibit A)

6. The Respondent, while working as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut, diverted, for her own use, the controlled substance Tylenol III. (Respondent Exhibit A)
7. The Respondent, while working as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut, abused the controlled substance Tylenol III. (Respondent's Exhibit A; Hearing Transcript, March 20, 1991, p.p. 5-6)
8. The Respondent was a patient in the Psychiatric Ward of Saint Francis Hospital and Medical Center, Hartford, Connecticut, for treatment of a psychiatric disorder, from July 13, 1989 to August 4, 1989. (Respondent Exhibit A)
9. The Respondent was a patient in the Psychiatric Ward of the Institute of Living, Hartford, Connecticut, for treatment of a psychiatric disorder from August 4, 1989 to August 15, 1989. (Respondent Exhibit A)
10. The Respondent was hospitalized at Saint Francis Hospital and Medical Center, Hartford, Connecticut, during November, 1989 and February, 1990 because of depression and anxiety. (Respondent Exhibit A)
11. The Respondent attempted suicide in August, 1990 by taking Trilafon, which had been the medication prescribed for her. (Hearing Transcript March 20, 1991, p. 8)

12. The Respondent was admitted to Saint Francis Hospital and Medical Center, Hartford, Connecticut, in August, 1990 after the suicide attempt. (Respondent Exhibit A)

13. Two psychiatrists who treated the Respondent gave diagnoses, which included the following: Generalized Anxiety Disorder, Post Traumatic Stress Disorder, Chronic Depression, Borderline Personality Disorder, and a History of Drug Abuse. (Respondent Exhibit D; Hearing Transcript, March 20, 1991, p. 20)

DISCUSSION AND CONCLUSIONS

The FIRST COUNT PARAGRAPH 3 of the Statement of Charges alleges the Respondent, while employed as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut, "diverted the controlled substance Tylenol III to her own use."

The Respondent admits this charge. (Respondent Exhibit A)

The above referenced conduct is prohibited by the General Statutes of Connecticut Section 20-99(b), as "...conduct which fails to conform to the accepted standards of the nursing profession..." including "... (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions...."

Based on the Respondent's admission, the Board concludes the Respondent violated the General Statutes of Connecticut, Section 20-99(b)(2) by the conduct specified in the First Count Paragraph 3.

The FIRST COUNT PARAGRAPH 4 of the Statement of Charges alleges the Respondent, while employed as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut, "abused Tylenol III and other narcotics."

The Respondent admits this charge to the extent that Respondent abused "Tylenol III." The Respondent denies abuse of "other narcotics." (Respondent Exhibit A) The Department agreed that it could not meet its burden of proof on the "other narcotics" and therefore abandoned its claim to "other narcotics." (Hearing Transcript March 20, 1991, p. 4)

The above referenced conduct of abusing Tylenol III is prohibited by the General Statutes of Connecticut Section 20-99(b) as "... (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals...."

Based on the Respondent's admission, the Board concludes the Respondent violated the General Statutes of Connecticut Section 20-99(b) (5) by her conduct of abusing Tylenol III as specified in the First Count Paragraph 4.

The SECOND COUNT of the Statement of Charges, alleges that the Respondent, while licensed as a registered nurse in the State of Connecticut was hospitalized on five different occasions between July 13, 1989 to August, 1990, "for treatment of a psychiatric disorder", "depression", "anxiety" and "after a suicide attempt", and therefore is subject to disciplinary action because of an emotional disorder and/or mental illness.

The Respondent admits to the Second Count to the extent that she was hospitalized as specified in paragraphs 2, 3, 4 and 5 of the Second Count. (Respondent Exhibit A)

The Board may take any of the actions set forth in the General Statutes of Connecticut Section 19a-17 if it determines a nurse's conduct "...fails to conform to the accepted standards of the nursing profession..." (Section 20-99(a)), which includes "...emotional disorder or mental illness..." (Section 20-99(b)(4)).

Based on the Respondent's admission and facts 8-13 the Board concludes the Respondent suffers from emotional disorder and mental illness.

The Board finds that the Department did not present any evidence to prove that the Respondent's emotional disorder and mental illness impairs her ability to practice nursing. Therefore, paragraph 6 of the Second Count is dismissed.

ORDER

Pursuant to its authority under the General Statutes of Connecticut Sections 19a-17 and 20-99, the Board hereby orders:

1. That the license of the Respondent be placed on probation for a minimum of three (3) years, as follows:
 - A. as to the First Count, minimum three (3) years probation.

2. If any of the following conditions of probation are not met, the Respondent's license may be immediately revoked.

- A. She shall provide a copy of this Memorandum of Decision to any and all employers. The Board shall be notified in writing by her employer(s), within thirty (30) days of the effective date, as to receipt of a copy of this Memorandum of Decision.
- B. Should the Respondent change employment at any time during the probationary period, she shall provide a copy of this Memorandum of Decision to her employer and said employer shall notify the Board in writing, within thirty (30) days, as to receipt of a copy of this Memorandum of Decision.
- C. She shall not accept employment as a nurse for a personnel provider service, Visiting Nurse Association or home health care agency for the period of her probation.
- D. She shall be responsible for the provision of monthly employer reports from her nursing supervisor (i.e. Director of Nursing) during the first year of probation. Monthly employer reports are due on the first business day of the month. Monthly reports shall commence with the report due December 1, 1991.
- E. She shall be responsible for the provision of bi-monthly employer reports from her nursing supervisor for the second and third years of probation. Bi-monthly employer reports

are due by the first business day of January, March, May, July, September and November. Bi-monthly reports shall commence with the report due January 1, 1993.

- F. Said reports cited in D and E above, shall include documentation of her ability to safely and competently practice nursing. Said reports shall be issued to the Board at the address listed in paragraph P below.
- G. At her own expense, she shall engage in counselling with a licensed psychiatrist.
- H. She shall provide a copy of this Memorandum of Decision to her psychiatrist. The Board will be notified in writing by her psychiatrist within thirty (30) days of the effective date, as to receipt of a copy of this Memorandum of Decision.
- I. She shall be responsible for monthly reports from her psychiatrist for the first year of probation. Monthly reports are due by the first business day of the month. Monthly reports shall commence with the report due December 1, 1991.
- J. She shall be responsible for bi-monthly reports from her psychiatrist for the second and third years of probation. Bi-monthly reports are due by the first business day of January, March, May, July, September and November. Bi-monthly reports shall commence with the report due January 1, 1993.

K. She shall be responsible for submitting to random urine and/or blood screens for alcohol and drugs at the discretion of her psychiatrist. Said screens shall be legally defensible in that the specimen donor and chain of custody must be identified throughout the screening. She shall be responsible for notifying the laboratory and her psychiatrist of any drug(s) she is taking. There must be at least one such alcohol and drug screen monthly for the first year of probation and bi-monthly for the second and third years of probation. Said screens shall be negative for alcohol and drugs. All positive results shall be confirmed by a second independent testing method. Reports of monthly random alcohol and drug screens are due by the first business day of the month. Reports of bi-monthly random alcohol and drug screens are due by the first business day of January, March, May, July, September and November. Monthly reports shall commence with the report due December 1, 1991. Bi-monthly reports shall commence with the report due January 1, 1993.

L. Said reports cited in I, J and K above, shall include documentation of dates of treatment, an evaluation of her progress and alcohol and drug free status, and copies of all laboratory reports. Said reports shall be issued to the Board at the address cited in paragraph P below.

M. She 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.

- N. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- O. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- P. All correspondence and reports are to be addressed to:

OFFICE OF THE BOARD OF EXAMINERS FOR NURSING
Department of Health Services
150 Washington Street
Hartford, Ct 06106

- 3. Any deviation from the terms of probation without prior written approval by the Board of Examiners for Nursing will constitute a violation of probation and will subject the Respondent to sanctions under the General Statutes of Connecticut, Section 19-17(a) and (c) including but not limited to the revocation of her license. Any extension of time or grace period for reporting granted by the Connecticut Board of Examiners for Nursing shall not be a waiver or preclude the Board's right to take action at a later time. The Connecticut 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 her address of record (most current address reported to the Licensure and Renewal Section of the Division of Medical Quality Assurance of the Department of Health Services or the Connecticut Board of Examiners for Nursing).
- 4. The date of this period of probation shall commence on November 15, 1991.

The Board of Examiners for Nursing hereby informs the Respondent and the Department of Health Services of the State of Connecticut of this decision.

Dated at Yanford, Connecticut, this 24th day of September, 1991.

Board of Examiners for Nursing

By Sally Jane M. Murphy

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