

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

Department of Public Health and Addiction Services v.

Deborah M. McClear, R.N.

Registered Nurse License No. R44431

P. O. Box 1573

Lakeland FL 33802-1573

CASE PETITION NO. 940111-10-004

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Public Health and Addiction Services (hereinafter the "Department") with a Statement of Charges dated February 28, 1994. The Statement of Charges alleged, in five (5) counts, violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Deborah McClear (hereinafter the "Respondent").

The Board issued a Notice of Hearing dated March 10, 1994 scheduling a hearing for April 14, 1994. The hearing was rescheduled and took place on June 29, 1994 in Room 2-A, Legislative Office Building, Capitol Avenue, 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 McClear, hereinafter referred to as the Respondent, was issued Registered Nurse License Number R44431 on May 1, 1989. (Department Exhibit 1-AA)
2. Pursuant to the General Statutes of Connecticut, §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. (Department Exhibit 1-A, 6)
3. The Respondent was aware of the time and location of the hearing. Department Exhibit 1-A indicates that the Statement of Charges was mailed to the Respondent and that Notice of Continuance of Formal Hearing was delivered by certified mail to the Respondent and the Respondent's attorney.
4. The Respondent was not present during the hearing but was represented by counsel. (Hearing Transcript, June 29, 1994, p. 2)
5. The Respondent, through her attorney, provided a verbal answer to the Statement of Charges. (Hearing Transcript, June 29, 1994 pp. 4-5)
6. That pursuant to a Memorandum of Decision dated September 24, 1991 the registered nurse license of the Respondent was placed on probation for a period of three (3) years, effective November 15, 1991, for the diversion and abuse of the controlled substance Tylenol # 3, while the Respondent was employed as a registered nurse at Mount Sinai Hospital, Hartford, Connecticut. (Department Exhibit 1-B) (Answer: Hearing Transcript, June 29, 1994, p. 5)

7. That the probation of the Respondent's registered nurse license included the conditions that the Respondent's employer submit reports to the Board documenting the Respondent's ability to safely practice nursing; that the Respondent engage in counseling with a licensed psychiatrist and that her psychiatrist submit reports to the Board on a scheduled basis; and that the Respondent submit to random urine and/or blood screens for alcohol and drugs on a bi-monthly basis during the second and third years of probation. (Department Exhibit 1-B) (Answer: Hearing Transcript, June 29, 1994, p. 5)
8. That the Respondent has not engaged in counseling with a licensed psychiatrist since on or about December 20, 1993 and that evaluation reports from the Respondent's psychiatrist, which were due in September and November 1993, have not been received by the Board. (Department Exhibit 1-C) (Answer: Hearing Transcript, June 29, 1994, p. 5)
9. That the Respondent has not submitted to random urine and/or blood screens for alcohol and drugs since on or about May 1993 and that reports of random screens for alcohol and drugs which were due in September and November 1993 have not been received by the Board. (Department Exhibit 1-C) (Hearing Transcript, June 29, 1994, p. 5)
10. That the Respondent was employed as a registered nurse at Westside Multicare Center, Manchester, Connecticut. (Department Exhibits C and D)
11. That between approximately October 13, 1993 and December 4, 1993, while working as a registered nurse at Westside Multicare Center, the Respondent failed to properly document her withdrawal, receipt and/or administration of the controlled substances: Acetaminophen - COD #3, Lorazepam, APAP W COD Elixir, Hydrocodone N/APAP, Propoxyphene N/APAP and Chlordiazepoxide. (Department Exhibit D) (Answer: Hearing Transcript, June 29, 1994, p. 4)

12. That the Respondent's registered nurse license became void effective December 1, 1993 due to the Respondent's failure to renew the license on or before her renewal date of September 30, 1993. (Answer: Hearing Transcript, June 29, 1994, p. 5)

13. That the Respondent worked as a registered nurse at Westside Multicare Center between on or about December 1, 1993 and December 10, 1993 without a valid Connecticut nursing license. (Answer: Hearing Transcript, June 29, 1994, p. 5)

DISCUSSION AND CONCLUSIONS

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

Deborah McClear was the holder of Connecticut registered nurse license number R44431 at all times relevant to the Statement of Charges. (Answer: Hearing Transcript, June 29, 1994, p. 4)

The Notice of Hearing and Statement of Charges sufficiently provided information 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).

During the hearing on June 29, 1994 pleas of no contest were entered by the Respondent's attorney to certain allegations within the Statement of Charges. It was stipulated by the Department and the Respondent that those allegations to which there was not a plea of no contest, were denied, and that the Board could make a finding that said allegations were not proven due to the lack of sufficient evidence.

The FIRST COUNT PARAGRAPH 2 of the Statement of Charges alleges that while working as a registered nurse at Westside Multicare Center, Manchester, Connecticut, the Respondent:

- "a. diverted to herself one or more of the following controlled substances from hospital stocks: acetaminophen-COD #3 (tylenol III), Lorazepam, APAP W COD elixir, Hydrocodone N/APAP, Propoxyphene N/APAP, and/or Chlordiazepoxide; and/or,
- b. falsified one or more controlled substance receipt and/or administration records; and/or,
- c. abuse and/or utilized to excess one or more of the controlled substances listed in paragraph 2a above; and/or,
- d. caused one or more medications withdrawn by respondent from hospital stocks for particular patients/ but not administered to them, to be charged to the accounts of such patients; and/or
- e. failed to properly document her withdrawal, receipt and/or administration of one or more of the controlled substances listed in paragraph 2a above to patients. "

The Respondent denies Paragraphs 2a, 2b, 2c and 2d and pleads no contest to Paragraph 2e.

(Answer: Hearing Transcript, June 29, 1994, p. 4)

With regard to the First Count Paragraphs 2a, 2b, 2c and 2d the Board concludes that the Department presented insufficient evidence to prove these charges. Therefore, the First Count Paragraphs 2a, 2b, 2c and 2d are dismissed.

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 carrying out usual nursing functions...."

Based on its findings and the Respondent's no contest plea the Board concludes that the Respondent's conduct as specified in the First Count Paragraph 2e is proven and that said conduct violates the General Statutes of Connecticut §20-99(b)(2). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The SECOND COUNT of the Statement of Charges alleges that on and before October 1993 the Respondent abused and/or used to excess the controlled substance Tylenol #3 and that the Respondent is chemically dependent and addicted to drugs, including but not limited to Tylenol #3.

The THIRD COUNT of the statement of Charges alleges the Respondent suffers from an emotional disorder and/or mental illness which substantially impairs the Respondent's ability to practice nursing with reasonable skill and safety.

The Respondent denies the Second and Third Counts. (Answer: Hearing Transcript, June 29, 1994, pp. 4-5)

The Board concludes the Department presented insufficient evidence to prove the Second and Third Counts, therefore the Second Count and the Third Count are dismissed.

The FOURTH COUNT of the Statement of Charges alleges the Respondent violated the terms of probation of her registered nurse license as set forth in a Memorandum of Decision dated September 24, 1991 in one or more of the following ways:

- "16. As of December 20, 1993, respondent was not engaged in counselling with a licensed psychiatrist.
17. Respondent has not submitted to random urine and/or blood screens for alcohol and drugs as required by the terms of the Board's MEMORANDUM OF DECISION since May of 1993.
18. The Board has not received bi-monthly reports from respondent's treating psychiatrist due in September and November of 1993.
19. The Board has not received bi-monthly reports of respondent's random urine and/or blood screens for drugs and alcohol for the months of September and November of 1993."

The Respondent pleads no contest to these charges. (Answer: Hearing Transcript, June 29, 1994, p. 5)

Based on its findings and the Respondent's no contest pleas the Board concludes that the allegations specified in the Fourth Count Paragraphs 16, 17, 18 and 19 are proven and that said conduct violates the terms of her probation as set forth in a Memorandum of Decision dated September 24, 1991.

Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The FIFTH COUNT of the Statement of Charges alleges that the Respondent worked as a registered nurse at Westside Multicare Center, Manchester, Connecticut, between on or about December 1, 1993 and December 10, 1993, when her registered nurse license was not valid due to her failure to renew said license by her renewal date of September 30, 1993 or within ninety (90) days thereafter.

The Respondent pleads no contest to this charge. (Answer: Hearing Transcript, June 29, 1994, p. 5)

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 carrying out usual nursing functions...."

Based on its findings and the Respondent's no contest plea the Board concludes that the Respondent's conduct, as specified in the Fifth Count is proven and that said conduct violates the General Statutes of Connecticut §20-99(b)(2). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

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:

1. That for the First Count, Fourth Count and the Fifth Count the Respondent's registered nurse license, No. R44431, be revoked.
2. Revocation shall become effective on the date this Memorandum of Decision is signed by the Chairperson of the Board of Examiners for Nursing.

The Board of Examiners for Nursing hereby informs the Respondent, Deborah M. McClear, and the Department of Public Health and Addiction Services of the State of Connecticut of this decision.

Dated at Newington, Connecticut this 13th day of October, 1994.

BOARD OF EXAMINERS FOR NURSING

By Janice Thibodeau

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