

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2003-0502-010-040

vs.

Charles Palmer, RN, Lic. No. R46761
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 and a Motion for Summary Suspension dated May 6, 2003. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Charles Palmer (hereinafter "respondent") which would subject respondent's registered nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

Based on the allegations in the 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 May 7, 2003, 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. Dept. Exh. 1.

The Board issued a Notice of Hearing dated May 7, 2003, scheduling a hearing for May 21, 2003. Dept. Exh. 1. Respondent was provided notice of the hearing and charges against him. The Summary Suspension Order, Notice of Hearing and Statement of Charges were served on respondent by State Marshal May 12, 2003. Dept. Exh. 1.

The hearing took place on May 21, 2003, at Hartford Hospital, Newington Campus, Curtis Building, 181 Patricia M. Genova Drive, Newington, Connecticut. Respondent was present during the hearing and was represented by counsel. Transcript, May 21, 2003, p. 2.

During the hearing the Department submitted an Amended Statement of Charges. Dept. Exh. 2. Respondent submitted a written answer to the charges. Resp. Exh. A.; Transcript, May 21, 2003, p. 8.

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 finds the witnesses' testimony credible and makes the following Findings of Fact:

1. Respondent was issued registered nurse license number R46761. Respondent was the holder of said license at all times referenced in the Amended Statement of Charges. Dept. Exh. 1; Resp. Exh. A.
2. At all times mentioned in these claims, respondent was employed as a registered nurse at the Mary Wade Home in New Haven, Connecticut. Dept. Exh. 5; Resp. Exh. A.
3. During April 2003, patient G.G. was a resident of the Mary Wade Home. Dept. Exh. 3 (under seal).
4. On or about April 15, 2003, Raymond McGibony, Jr. was on duty as a certified nurse aide at the Mary Wade Home. Transcript, May 21, 2003, pp. 41, 43.
5. On April 14, 2003, the care plan for patient G.G. with regard to transfers was changed from "assist with transfer with gate belt" to two persons to assist with transfers with gate belt. Dept. Exh. 3, p. 33 of 57 (under seal); Transcript, May 21, 2003, pp. 117-118.
6. On April 15, 2003, respondent documented that he assisted patient G.G. to the bathroom at 3:00 a.m. Dept. Exh. 3, p. 49 of 57 (under seal).
7. On April 15, 2003, at approximately 3:00 a.m., certified nurse aide McGibony entered the room of patient G.G. while doing rounds. Mr. McGibony observed that patient G.G. and respondent were in the patient's bathroom. Mr. McGibony further observed that the patient G.G. was seated on the toilet and that respondent was standing in front the patient with his pants and underwear down, and his hand on the patient's neck and head. Transcript, May 21, 2003, pp. 43-51.
8. In a subsequent conversation on April 15, 2003, respondent acknowledged to certified nurse aide McGibony that his conduct with patient G.G. was inappropriate and further indicated that he had previously engaged in similar conduct with other individuals. Transcript, May 21, 2003, pp. 45-46.

Conclusions of Law and Discussion

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

Charles Palmer held a valid registered nurse license in the State of Connecticut at all times referenced in the Amended Statement of Charges.

The Notice of Hearing and Amended 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, Amended 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.

PARAGRAPH 3 of the Amended Statement of Charges alleges that on or about April 15, 2003, while working as a registered nurse, respondent sexually abused female resident G.G.

Respondent denies the charge in Paragraph 3. Resp. Exh. A.

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 carrying out usual nursing functions . . .

The Board finds that substantial and credible evidence was presented by the Department. The Board also finds credible the testimony of Department witness Raymond McGibony, Jr..

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraph 3 of the Amended Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(a)(2) and 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 Paragraph 3 of the Amended Statement of Charges, respondent's registered nurse license, number R46761, is revoked effective the date this Memorandum of Decision is signed by the Board.
2. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.

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

Dated at Hartford, Connecticut this 17th day of September 2003.

BOARD OF EXAMINERS FOR NURSING

By  _____

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 18th day of September 2003, to:

Charles Palmer
37 Woodland Avenue
West Haven, CT 06473-1942

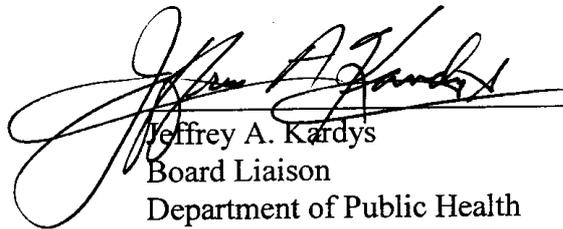
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Certified Mail RRR #70022410000675062215

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
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410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Board Liaison
Department of Public Health
Public Health Hearing Office