

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2004-1216-010-106

vs.

Mary Sutton Hagan, RN, Lic. No. R56353
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 dated December 28 2004. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Mary Sutton Hagan (hereinafter "respondent") which would subject respondent's registered nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b)..

The Board issued a Notice of Hearing dated December 30, 2004, scheduling a hearing for April 20, 2005. Dept. Exh. 1-A1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent on January 4, 2005. Dept. Exh. 1-A3.

The hearing took place on April 20, 2005, at the Hartford Hospital – Newington Campus, 181 Patricia M. Genova Drive, Newington, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. Transcript, April 20, 2005, p. 2.

Respondent did not file an Answer to the Statement of Charges. During the hearing, the Department made an oral motion to deem the allegations admitted because an Answer was not filed. The Department's motion was granted. Transcript, April 20, 2005, pp. 4-5.

Respondent arrived at the hearing location after the hearing concluded. To provide respondent with an opportunity to answer the Statement of Charges, the Board scheduled a second hearing day.

The Board issued a Notice of Hearing dated April 25, 2005, scheduling a second hearing day for June 1, 2005. The Notice of Hearing was delivered by certified mail to respondent on April 26, 2005. Board. Exh. 1; Transcript, June 1, 2005, pp. 3-4.

The second day of hearing took place on June 1, 2005, at the Department of Public Health Complex, 410 Capitol Avenue, Hartford, Connecticut. Respondent was not present during the hearing and was not represented by counsel. Transcript, June 1, 2005.

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 makes the following Findings of Fact:

1. Respondent was issued registered nurse license number R56353 on January 29, 1999. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exhs. 1-A2, 1-C
2. Pursuant to a Memorandum of Decision (hereinafter "the Memorandum") dated August 15, 2001, the Board ordered that respondent's registered nurse license be placed on probation for a period of four years. Such disciplinary action was based upon respondent's diversion and abuse of hydromorphone, codeine and oxycodone during December 2000 to January 2001. Said Memorandum specifically provided that respondent submit to random alcohol/drug screens that shall be negative for the presence of alcohol and drugs. Pursuant to an Order dated July 16, 2003, the Memorandum was modified such that respondent's probation was extended for an additional two (2) years because she used alcohol and Ambien in violation of her license probation. Dept. Exh. 1-Bb, 1-Bc.
3. Respondent submitted to random urine screening on September 21, 2004. Laboratory results for the September 21, 2004 urine specimen were positive for the presence of butalbital, a barbiturate. Dept. Exh. 1-B, 1-Ba, 1-Bd.
4. As an explanation for the positive urine screen, respondent claims that while at a friend's home on September 21, 2004 she ingested a pill given to her by her friend because she had a headache, and that unknown to respondent, the pill was a butalbital that had been prescribed for respondent's friend. Dept. Exh. 1-Be,f,g.

Conclusions of Law and Discussion

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

Mary Sutton Hagan held a valid registered nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and 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, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of her 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.

PARAGRAPHS 2 and 3 of the Statement of Charges allege that on or about August 15, 2001 the Board issued a Memorandum of Decision that placed respondent's registered nurse license on probation because of respondent's diversion and abuse of hydromorphone, codeine and oxycodone. That the Memorandum was modified in July 2003 to extend respondent's probation as a result of respondent's use of alcohol and Ambien in violation of her probation. The Memorandum specifically provided that respondent submit to random alcohol/drug screens that shall be negative for the presence of alcohol and drugs for the period of her probation.

PARAGRAPH 4 of the Statement of Charges alleges that on September 21, 2004, respondent tested positive for butalbital.

PARAGRAPH 5 of the Statement of Charges alleges that respondent's conduct constitutes a violation of the terms of probation as set forth in the Memorandum of Decision dated August 15, 2001 and as modified in July 2003.

Respondent did not submit an Answer to the Statement of Charges. Pursuant to § 19a-9-20 of the Regulations of Connecticut State Agencies the Board deems the allegations in the Statement of Charges to be admitted.

Based on its findings, the Board concludes that respondent's conduct as alleged in the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct violates the terms of probation as set forth in the Memorandum of Decision dated August 15, 2001 as modified on July 16, 2003. Therefore, respondent's registered nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* § 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 Paragraphs 2, 3 4 and 5 of the Statement of Charges, the probation of respondent's registered nurse license R56353, as set forth in the Memorandum of Decision dated August 15, 2001 and as modified on July 16, 2003, is extended until September 1, 2009 subject to the following conditions.

2. If any of the following conditions of probation are not met, respondent's registered nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. During the period of probation the Board shall pre-approve respondent's employment and/or change of employment within the nursing profession.

Respondent shall not be employed as a nurse for a personnel provider service, assisted living services agency, homemaker-home health aide agency, or home health care agency, and shall not be self-employed as a nurse for the period of probation.
 - B. Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
 - C. If employed as a nurse, respondent shall cause employer reports to be submitted to the Board, by her immediate supervisor during the entire probationary period. Employer reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.
 - D. The employer reports cited in Paragraph C above shall include documentation of respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph P below.
 - E. Should respondent's employment as a nurse be involuntarily terminated or suspended, respondent and her employer shall notify the Board within seventy-two (72) hours of such termination or suspension.
 - F. If respondent pursues further training in any subject area that is regulated by the Department, respondent shall provide a copy of this Memorandum of Decision to the educational institution or, if not an institution, to respondent's instructor. Such institution or instructor shall notify the Department in writing as to receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt. Said notification shall be submitted directly to the Department at the address cited in Paragraph O below.
 - G. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist, approved by the Board and the Department, during the entire period of probation.
 - H. Respondent shall provide a copy of this Memorandum of Decision to her therapist. The Board shall be notified in writing by her therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.

- I. Respondent shall cause evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.
- J. The therapist reports cited in Paragraph I above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph O below.
- K. (1) At her expense, respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.
- (2) 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. For any prescription of a controlled substance(s) for more than two consecutive weeks, the respondent shall cause the provider prescribing the controlled substance(s) to submit quarterly reports to the Board and the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:
1. A list of controlled substances prescribed by this provider for the respondent;
 2. A list of controlled substance(s) prescribed by other providers;
 3. An evaluation of the respondent's need for the controlled substance;
 4. An assessment of the respondent's continued need for the controlled substance(s).
- (3) There must be at least two (2) such random alcohol/drug screen weekly during the entire probationary period.
- (4) Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

(5) Random alcohol/drug screens must include testing for the following substances:

Amphetamines	1 Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

(6) Laboratory reports of random alcohol and drug screens shall be submitted directly to the Board and the Department, at the address cited in Paragraph O below, by respondent's therapist, personal physician or the testing laboratory.

- L. Respondent 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 authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.
- M. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.
- N. The Board must be informed in writing prior to any change of address.
- O. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
Board of Examiners For Nursing
 410 Capitol Avenue, MS #12HSR
 P. O. Box 340308
 Hartford CT 06134-0308

3. Any deviation from the terms of probation, without prior written approval by the Board, shall constitute a violation of probation, which will be cause for an immediate hearing on charges of violating this Order. Any finding that respondent has violated this Order will subject respondent to sanctions under §19a-17(a) and (c) of the General Statutes of Connecticut, including but not limited to, the revocation of her license. Any extension of time or grace period for reporting granted by the Board shall not be a waiver or preclude the Board's right to take subsequent action.

The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to respondent's address of record (most current address reported to the Office of Practitioner Licensing and Certification of the Department of Public Health or the Board).

5. This Memorandum of Decision becomes effective on the date signed by the Board of Examiners for Nursing.

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

Dated at Hartford, Connecticut this 2nd day of November 2005.

BOARD OF EXAMINERS FOR NURSING

By 