

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Jacqueline Barton, LPN
License No. 012174

Petition No. 2008-0806-011-040

MEMORANDUM OF DECISION

Procedural Background

On October 21, 2008, the Department of Public Health ("the Department") filed a Motion for Summary Suspension ("the Motion") and a Statement of Charges ("the Charges") with the Board of Examiners for Nursing ("the Board"). Dept. Exh. 1. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("the Statutes") by Jacqueline Barton ("respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to §§19a-17 and 20-99(b) of the Statutes. On November 5, 2008, the Department filed a Motion to Amend the Statement of Charges ("the Amended Charges"). The Board granted the motion on November 5, 2008. Dept. Exh. 1.

Based on the allegations in the Charges, the Amended Charges and the affidavits and reports accompanying the Motion, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety and ordered, on November 5, 2008, pursuant to §§4-182(c) and 19a-17(c) of the Statutes, that respondent's licensed practical nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Amended Charges ("the Order"). Dept. Exh. 1.

On November 7, 2008, the Charges, the Amended Charges, the Order, and a Notice of Hearing were served on respondent by State Marshal. Dept. Exh. 1.

The hearing was held on November 19, 2008. At the hearing, respondent did not appear and was not represented; the Department was represented by Attorney David Tilles. Tr. p.3. Respondent did not file an answer the charges or the Amended Charges.

Following the close of the record on November 19, 2008, 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 paragraph one of the Amended Charges, the Department alleges that Jacqueline Barton, LPN of Woodstock, Connecticut (hereinafter "respondent") is, and has been at all times referenced as the holder of Connecticut licensed practical nurse license number 012174.
2. In paragraph two of the Amended Charges, the Department alleges that at various times in 2005, including, but not limited to September 19, 2005, while employed at Harrington Memorial Hospital in Southbridge, Massachusetts, and worked in the office of Dr. Stephanie Keaney, M.D. in the Medical Arts Building adjacent to the hospital, respondent was impaired by alcohol inebriation while at work, and also missed work due to inebriation.
3. In paragraph three of the Amended Charges, the Department alleges that at various times in 2005, including but not limited to September 19, 2005, while respondent was working in Dr. Keaney's office, respondent's nursing care for various patients failed to meet standards of the profession, including but not limited to giving the wrong vaccinations to two children and giving incorrect information to pharmacies concerning prescriptions for patients.
4. In paragraph four of the Amended Charges, the Department alleges that respondent's abuse of alcohol does, and/or may, affect her practice as a licensed practical nurse.
5. In paragraph five of the Amended Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-99(b), including but not limited to:
 - a. §20-99(b)(2); and/or
 - b. §20-99(b)(5).
6. In paragraph six of the Amended Charges, the Department alleges that paragraph 1 is incorporated herein by reference as if set forth in full.
7. In paragraph seven of the Amended Charges, the Department alleges that on or about October 25, 2005, the Massachusetts Board of Registration in Nursing (hereinafter, "MBRN") commenced an investigation against respondent. On or about November 10, 2005, an MBRN investigator contacted respondent by telephone. On October 20, 2006, MBRN revoked respondent's Massachusetts license.

8. In paragraph eight of the Amended Charges, the Department alleges that on or about May 22, 2006, respondent sent her renewal application card for her Connecticut license to the Department of Public Health. Although she knew that MBRN had commenced an investigation concerning her Massachusetts license, respondent falsely answered, “no”, in response to the question, “In the past year...have you had any disciplinary action taken against you or any such actions pending by another state licensure/ certification authority?”
9. In paragraph nine of the Amended Charges, the Department alleges that on August 13, 2007, respondent sent her renewal application card for her Connecticut license to the Department of Public Health. Although she knew that MBRN had revoked her Massachusetts license, respondent falsely answered, “no”, in response to the question, “In the past year... have you had any disciplinary action taken against you...by another state licensure/ certification authority?”
10. In paragraph ten of the Amended Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-99(b), including but not limited to:
 - a. §20-99(b)(1); and/or
 - b. §20-99(b)(6).

Findings of Fact

1. The Department provided respondent with reasonable and adequate written notice of the allegations contained in the Charges and the Amended Charges. Dept. Exhs. 1, 2; Tr., p. 4.
2. Respondent did not appear at the hearing on November 19, 2008 and did not file an Answer to the Charges or the Amended Charges. Tr., p. 3, 13.
4. The factual allegations contained in paragraphs 1 through 4, and paragraphs 6 through 9 of the Amended Charges are deemed admitted and true. Dept. Ex. 1, Tr. p. 13.

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 19a-10 of the Connecticut General Statutes provides in pertinent part: “The boards and commissions listed in subsection (b) of section 19a-14 may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with chapter 54 and the regulations established by the Commissioner of Public Health.”

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: (1) Fraud or material deception in procuring or attempting to procure a license to practice nursing; (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions; ... (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; (6) fraud or material deception in the courts of professional services or activities; ...

The Department sustained its burden of proof with regard to all of the allegations contained in the Charges. Respondent did not appear at the hearing and the Department’s oral motion to deem the factual allegations contained in paragraphs one through and including four, and six through and including nine of the Amended Charges admitted, was granted. Accordingly, the Board finds that Respondent has failed to meet the accepted standards of the nursing practice by being impaired by alcohol while at work, failing to give the proper vaccination to patients and providing incorrect information to pharmacies and Respondent has therefore violated of C.G.S. §§ 20-99(b)(2) and 20-99(b)(5). The Board further finds that, in the course of applying for renewal of her Connecticut nursing license, Respondent falsely answered questions regarding disciplinary actions in other states and Respondent has therefore violated C.G.S. § 20-99(b)(1).

The Board concludes that the conduct constitutes grounds for disciplinary action pursuant to §§20-99(b) and 19a-17 of the Statutes, and that respondent is not able to practice nursing with reasonable skill and safety at this time.

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 012174 held by Jacqueline Barton, as follows:

Respondent's license number 012174 to practice as a licensed practical nurse in the State of Connecticut is hereby revoked.

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

Dated at Hartford, Connecticut this 17th day of June, 2009.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bayliff

CERTIFICATION

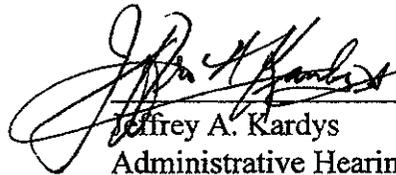
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 17th day of June 2009, by certified mail, return receipt requested, and first class mail to:

Jacqueline Barton
1565 Route 171
Woodstock Valley, CT 06282

Certified Mail RRR #91-7108-2133-3932-0551-0393

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
Department of Public Health
Public Health Hearing Office