

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

Department of Public Health

Petition No. 2005-0815-011-032

v.

Colleen Allen, LPN, Lic. No. 016924
Respondent

MEMORANDUM OF DECISION

Procedural Background

The Board of Examiners for Nursing (hereinafter "Board") was presented by the Department of Public Health (hereinafter "Department") with a Statement of Charges dated September 22, 2005. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Colleen Allen (hereinafter "respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

The Board issued a Notice of Hearing dated October 5, 2005, scheduling a hearing for October 19, 2005. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges was served on respondent by State marshal on October 11, 2005. Dept. Exh. 1.

The hearing took place on October 19, 2005, in Room 1-A, Legislative Office Building Capitol Avenue, Hartford, Connecticut. Dept. Exh. 1.

Respondent was present during the hearing but was not represented by counsel. Transcript, October 19, 2005, p. 1.

Respondent orally answered the Statement of Charges. Transcript, pp. 5-7.

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 licensed practical nurse license number 016924. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1; Transcript, p. 5.
2. Pursuant to a Consent Order dated May 22, 1991, respondent's licensed practical nurse license was placed on probation for three years. In said Order, respondent admitted that during 1990, while working as a licensed practical nurse, she diverted the controlled substance Meperidine. Respondent successfully completed the probation without any violation. Dept. Exh. 3-tab E.3; Transcript, p 27.
3. On or about October 2, 1998, respondent voluntarily surrendered her license to practice as a licensed practical nurse subsequent to allegations that she abused and diverted controlled substances. Dept. Exh. 3-tab C, tab D.
4. Pursuant to a Reinstatement Consent Order (hereinafter "Reinstatement Order") dated January 27, 2003, the Board ordered that respondent's licensed practical nurse license be reinstated and placed on probation for a period of four (4) years. Said Reinstatement Order specifically provided that respondent shall submit to observed random urine screens for drugs and alcohol, which shall be negative for the presence of drugs and alcohol, and that respondent abstain from using alcohol and controlled substances. Dept. Exh. 3-tab B.
5. On April 21, 2004, the Board ordered a Modification of Consent Order in petition number 2003-00923-011-034 (hereinafter "Modification Order") that extended respondent's licensure probation to a period of four years and six months. All other terms and conditions of the Reinstatement Order remained in full force and effect. Such disciplinary action was based upon the Department's receipt of a lab report, which identified that one of respondent's urine screens tested positive for alcohol. Dept. Exh. 3-tab A.
6. Respondent submitted to random urine screening on or about July 27, 2005. Laboratory results for the July 27, 2005 urine specimen were positive for the presence of opiates. Dept. Exh. 2-tab d-1.
7. Since August 2004, respondent has been receiving individual therapy for chemical dependency and has been participating in Alcoholics Anonymous. Dept. Exh. 2; Resp. Exh. A.

Conclusions of Law and Discussion

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

Colleen Allen held a valid licensed practical 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.

PARAGRAPH 2 of the Statement of Charges alleges that on or about January 27, 2003, the Department ordered and accepted a Reinstatement Consent Order that placed respondent's licensed practical nurse license on probation for a period of four (4) years. Such disciplinary action was based upon respondent's admitted abuse or excess use of controlled substances.

PARAGRAPH 3 of the Statement of Charges alleges that said Reinstatement Consent Order specifically provided that respondent shall submit to observed random urine screens for drugs and alcohol, which shall be negative for the presence of drugs and alcohol, and that respondent abstain from alcohol and controlled substances.

PARAGRAPH 4 of the Statement of Charges alleges that on or about April 21, 2004, the Board ordered a Modification of Consent Order that extended respondent's licensure probation to a period of four years and six months. All other terms and conditions remained in full force and effect. Such a disciplinary action was based upon the Department's receipt of a lab report, which identified a positive screen for alcohol.

PARAGRAPH 5 of the Statement of Charges alleges on or about July 27, 2005, respondent's urine screen tested positive for opiates, a controlled substance.

Respondent admits these allegations. Transcript, October 19, 2005, pp. 5-6.

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, incompetent or negligence in carrying out usual nursing functions; . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; . . .

Based on its findings and respondent's admissions, 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 Reinstatement Consent Order dated January 27, 2003 and modified on April 21, 2004 and Conn. Gen. Stat. § 20-99(b)(2) and (b)(5). Therefore, respondent's licensed practical 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 licensed practical nurse license number 016924, as ordered pursuant to Reinstatement Order dated January 27, 2003 and modified on April 21, 2004, is extended until April 30, 2009.
2. If any of the following conditions of probation are not met, respondent's licensed practical 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 entire probationary period.

- 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 O below.
- E. Should respondent's employment as a nurse be involuntarily terminated or suspended, respondent and his 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 entire probationary period.
- 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; and
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 screens monthly during the of the remainder of the 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	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).

4. 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, Colleen Allen, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Newington, Connecticut this 19th day of April, 2006.

BOARD OF EXAMINERS FOR NURSING

By 