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STATE OF CONNECTICUT

BOARD OF EXAMINERS FOR NURSING

Department of Health Services v.

Robin Fogarty

585 Park Road

Waterbury, Connecticut

CT. L.P.N. License No. 017080

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereafter the "Board") was presented by the Department of Health Services (hereafter the "Dept.") with a Statement of Charges dated Sept. 20, 1988. The Statement of Charges alleged violations of certain provisions of Chapter 378, Connecticut General Statutes. The Board issued a Notice of Hearing dated Sept. 21, 1988. The hearing took place on Oct. 12, 1988 in Room B-120, Department of Health Services, 150 Washington Street, Hartford Connecticut.

Each member of the Board involved in this decision attests that he/she 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. Robin Fogarty, hereafter referred to as the Respondent, was issued Connecticut Licensed Practical Nurse license number 017080 on December 1, 1977. (Dept. Exhibit 4)
2. Pursuant to Connecticut General Statutes, Section 4-182(c), the Respondent was provided with the full opportunity, prior to the institution of agency action, to show compliance with all the terms for the retention of her license.
3. The Respondent was aware of the time and location of the hearing. Dept. Exhibit 2 indicates that notice of the location and time of this hearing were delivered by certified mail to the Respondent.
4. The Respondent, while working as a licensed practical nurse at Waterbury Hospital, in Waterbury, Connecticut, in January 1988, diverted the controlled substance Demerol.
5. The Respondent, while working as a licensed practical nurse at Waterbury Hospital in January 1988, abused Demerol.

6. The Respondent, while working as a licensed practical nurse at Waterbury Hospital in January 1988, failed to properly and accurately make documentations in medical and hospital records.

7. The Respondent, while working as a licensed practical nurse at Waterbury Hospital in January 1988, falsified one or more Controlled Substance Receipt Records.

#### DISCUSSION AND CONCLUSIONS

The First Count, Subsection 3a, alleges that while employed as a licensed practical nurse at Waterbury Hospital during January 1988, the Respondent diverted the controlled substance Demerol. The Respondent admitted this charge at the hearing.

This conduct is a violation of Connecticut General Statutes Section 20-99(b)(2), which includes "(2) illegal conduct, incompetence or negligence in carrying out usual nursing functions...." The Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(2), as specified in the First Count, Subsection 3a.

The First Count, subsection 3b, alleges that the Respondent abused or used to excess said medication (Demerol). Respondent admitted to this charge at the hearing.

This conduct is a violation of Connecticut General Statutes Section 20-99(b)(5) which includes: "(5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals...." The Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(5) as specified in the First Count Subsection 3b.

The First Count, Subsection 3c, alleges that the Respondent failed to completely or properly or accurately make documentations in medical or hospital records. Respondent admitted this charge at the hearing.

The described conduct is a violation of the Connecticut General Statutes Section 20-99(b)(6) and (7) which include: "(6) fraud or material deception in the course of professional services or activities; (7) wilful falsification of entries in any hospital, patient or other record pertaining to drugs, the results of which are detrimental to the health of a patient...." The Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(6) and (7), as specified in the First Count, Subsection 3c.

The First Count, Subsection 3d, alleges that the Respondent falsified one or more Controlled Substance Receipt Records. Respondent admitted to this charge at the hearing.

This conduct is a violation of Connecticut General Statutes 20-99(b)(6) and (7) which include: "(6) fraud or material deception in the course of professional services or activities; (7) wilful falsification of entries in any hospital, patient or other record pertaining to drugs, the results of which are detrimental to the health of a patient...." The Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(6) and (7) as specified in the First Count, Subsection 3d.

ORDER

It is the unanimous decision of those members of the Board of Examiners for Nursing who were present and voting that:

1. The license of the Respondent be placed on probation for a minimum of two (2) years as follows:
  - A. as to the First count, Subsection 3a, two (2) years probation;
  - B. as to the First count, Subsection 3b, two (2) years probation;
  - C. as to the First count, Subsection 3c, two (2) years probation;
  - D. as to the First Count, Subsection 3d, two (2) years probation;
  - E. the two (2) year probationary periods referenced in (A), (B), (C) and (D), above, are to run concurrently for an effective probationary period of two (2) years.

2. If any of the following conditions of probation are not met, the Respondent's license may be immediately revoked.

- A. She shall provide a copy of this Memorandum of Decision to her therapist.
- B. She shall engage in counseling with a licensed or certified therapist at her own expense.
- C. She shall be responsible for monthly reports from her therapist for the first year of her probation; said reports are due on the first business day after the start of every month.
- D. She shall be responsible for bi-monthly reports from her therapist for the second year of her probation; said reports are due on the first business day after the start of every second month.
- E. She shall be responsible for random urine and/or blood screens for drugs and alcohol at the discretion of her therapist. She shall be responsible for notifying the laboratory and her therapist of any drug(s) she is taking. There must be at least one such drug and alcohol screen monthly for the first year of probation, and bi-monthly for the second year of probation. Said reports shall be negative for drugs and alcohol.

- F. Said reports cited in (C), (D), and (E), above, shall include documentation of dates of treatment, an evaluation of her progress and drug and alcohol free status, and copies of all the laboratory reports. Said reports shall be issued to the Board at the address cited in paragraph (O), below.
- G. She shall provide a copy of this Memorandum of Decision to her employer.
- H. She shall not accept employment as a nurse for a personnel provider service for the period of her probation.
- I. She shall be responsible for the provision of monthly employer reports from her nursing supervisor (i.e. Director of Nursing) due on the first business day after the start of every month for the the first year of her employment during the first year of probation.
- J. She shall be responsible for the provision of bi-monthly reports from her nursing supervisor due on the first business day after the start of every second month, for the second year of her employment during the period of her probation.
- K. Said reports cited in (I) and (J), above, shall include documentation of her ability to safely and competently practice nursing. Said reports shall be issued to the Board at the address listed in paragraph (O), below.

- L. She 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.
- M. The Connecticut Board of Examiners for Nursing must be  
informed prior to any change of employment.
- N. The Connecticut Board of Examiners for Nursing must be  
informed prior to any change of address.
- O. All correspondence and reports are to be addressed to:  
Office of the Board of Examiners for Nursing  
Department of Health Services  
150 Washington Street  
Hartford, CT 06106

3. Any deviation from the terms of probation without prior  
written approval by the Board of Examiners for Nursing shall  
constitute a violation of probation. A violation of any term(s) of  
probation shall result in the right of the Connecticut Board of  
Examiners for Nursing to immediately revoke or take other  
disciplinary action as cited in Connecticut General Statutes Section  
19a-17 against her nursing license. Any extension or time of grace  
period for reporting granted by the Connecticut Board of Examiners  
for Nursing shall not be a waiver or preclude the Board's right to  
take action at a later time. The Connecticut Board of Examiners for  
Nursing shall not be required to grant future extensions of time or  
grace periods.

Notice of revocation or other disciplinary action shall be sent to her address of record (most current address reported to the Licensure and Renewal Section of the Division of Medical Quality Assurance of the Department of Health Services or the Connecticut Board of Examiners for Nursing).

4. The date of this period of probation shall commence on February 1, 1989.

The Board of Examiners for Nursing hereby informs the Respondent and the Department of Health Services of the State of Connecticut of this decision.

Dated at *Hartford*, Connecticut, this *29<sup>th</sup>* day of *November*, 1988

BOARD OF EXAMINERS FOR NURSING

By *Beth Jane M. Murphy RN.*