

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Health Services v.

Robin Fogarty, L.P.N., License No. 017080

326 Park Avenue

Naugatuck, CT 06770

CASE PETITION NO. 890210-11-002

MEMORANDUM OF DECISION

INTRODUCTION

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Health Services (hereinafter the "Department") with a Motion For Summary Suspension dated February 22, 1989 (Department Exhibit 3). The Board was presented by the Department with a Statement of Charges dated February 22, 1989 (Department Exhibit 3).

The Statement of Charges alleged violations of certain provisions of Chapter 378, Connecticut General Statutes. The Board issued a Notice of Hearing and Summary Suspension dated February 28, 1989. The hearing took place on March 8, 1989 in Room 112, National Guard Armory, Maxim Road, 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.

FINDINGS OF FACTS

Based on the testimony given and the exhibits offered into evidence, the Board made the following findings of fact:

1. Robin Fogarty, hereinafter referred to as the "Respondent", was issued Connecticut Registered Nurse license number 017080 on December 1, 1977 (Department Exhibit 2).
2. Pursuant to Connecticut General Statutes, Section 4-182(c), the Respondent was provided 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 previously put on probation for a period of two years, effective February 1, 1989 pursuant to a Memorandum of Decision (Department Exhibit 3).
4. The Respondent was aware of the Motion For Summary Suspension of her license. Department Exhibit 1 indicates that notice of the Summary Suspension was delivered by certified mail to the Respondent. The Respondent was aware of the time and location of the hearing. Department Exhibit 1 indicates that notice of the location and time of this hearing were delivered by certified mail to the Respondent's address of record. The Respondent was not present and not represented by counsel.
5. The Respondent, while working as a licensed practical nurse at Waterbury Hospital Health Center, in Waterbury, Connecticut, in December, 1988 and subsequent times thereto, diverted the controlled substance Demerol.
6. The Respondent, while working as a licensed practical nurse at Waterbury Hospital Health Center, in Waterbury, Connecticut, in December, 1988 and subsequent times thereto, abused and utilized to excess said Demerol.

7. The Respondent, while working as a licensed practical nurse at Waterbury Hospital Health Center, Waterbury, Connecticut, in December, 1988 and subsequent times thereto, failed to make completely, and properly or accurately make documentations in the medical or hospital records.

8. The Respondent, while working as licensed practical nurse at Waterbury Hospital Health Center, Waterbury Connecticut, in December, 1988, and subsequent times thereto, falsified one or more Controlled Substance Receipt Records.

9. The Respondent, while working as a licensed practical nurse at Waterbury Hospital Health Center, Waterbury, Connecticut, in December, 1988, and subsequent times thereto, failed to properly waste Demerol.

DISCUSSION AND CONCLUSIONS

The First Count, Subsection 3a, alleges that while employed as a licensed practical nurse at Waterbury Hospital Health Center, during December, 1988 and subsequent times thereto, the Respondent diverted the controlled substance Demerol. The Respondent admits this charge (Department Exhibit 3, pp. 18-19).

The above referenced 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 has determined that while employed as a licensed practical nurse at Waterbury Hospital Health Center, the Respondent diverted the controlled substance Demerol. Specifically, the Respondent admitted to this activity in a written statement to drug

control officer Barry Gordon, dated January 11, 1989 (Department Exhibit 3, pp.18-19). Therefore, the Board concludes that 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 utilized to excess said Demerol. The Respondent neither admits or denies this charge.

The above referenced conduct is a violation of the Connecticut General Statutes Section 20-99(b)(5) which includes: "... (5) abuse or excessive use of drugs, including alcohol, narcotics, or chemicals...."

The Board has determined that the Respondent abused or utilized to excess said Demerol. The Respondent admitted in a sworn handwritten statement to Drug Control Agent Barry Gordon that "...I was using it for my own personal use approximately 2x weekly- (100mg/ per wk)" (Department Exhibit 3, p. 19). Any such diversion of a controlled substance for self administration constitutes abuse of that substance. Therefore, the Board concludes that 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 the medical or hospital records. The Respondent neither admits or denies this charge.

The above referenced conduct is a violation of Connecticut General Statutes Section 20-99(b)(6), which includes "... (6) fraud or material deception in the course of professional services or activities...."

The Board has determined that the Respondent failed to

completely, properly and accurately make documentations in the medical or hospital records. Sworn testimony given by Drug Control Agent Barry Gordon summarizes in part, proof of use records for two patients. Specifically a patient's Medication Administration Records show no administrations of Demerol, yet there was a withdrawal on a proof of use sheet by Nurse Fogarty indicating the administration of Demerol to the patient. Also, another patient's Medication Administration Records showed no administration of Demerol and the medication proof of use record showed an administration at 7:30 p.m. A check of that patient's record indicated that the patient was discharged from the hospital at 10:30 in the morning (Transcript of Hearing, dated March 8, 1989, pp. 8 and 9). Therefore, the Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(6), 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. The Respondent neither admits or denies this charge.

The described conduct is a violation of Connecticut General Statutes Section 20-99(b)(6), which includes "... (6) fraud or material deception in the course of professional services or activities...."

The Board has determined that the Respondent falsified one or more Controlled Substance Receipt Records. Specifically, sworn testimony given by Drug Control Agent Barry Gordon summarizes proof of use records for two patients. Specifically, a patient's Medication Administration Records showed no administrations of Demerol, yet there was a withdrawal on proof of use sheets by Nurse Fogarty indicating the administration of Demerol to the patient.

Also, an administration of Demerol was indicated on a proof of use record; however, the Medication Administration Records showed no administration of Demerol and the medication proof of use record showed an administration at 7:30 p.m. A check of the patient's record indicated that the patient was discharged from the hospital at 10:30 in the morning (Transcript of Hearing, dated March 8, 1989, pp. 8 and 9). Therefore, the Board concludes that the Respondent has violated Connecticut General Statutes Section 20-99(b)(6), as specified in the First Count, subsection 3d.

The First Count, Subsection 3e, alleges that the Respondent failed to properly waste Demerol. The Respondent neither admits or denies this charge.

The described 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 has determined that the Respondent failed to properly waste the controlled substance Demerol. Specifically, in written statement given by Irene Buckley, R.N., she referenced an incident involving the Respondent. "I checked the narcotics book and found the Demerol sheet (50mg, I.M.) to be completely used up. The last 3 or 4 entries had partial usage requiring waste. The entries were done by Robin Fogarty, LPN, there was no co-signing of waste.... Nancy informed me that Robin had the sheet and was trying to find someone to co-sign for her.... I went to Pat and asked her if she did co-sign for Robin. She stated she did, 'she pressured me, I didn't want to but she kept asking me....' I went to Robin and asked her why she had Pat sign her waste when she did not see it. I told Robin that Pat informed me that she did not see it.... Robin stated that everybody does this, why are you upset?" (Department Exhibit 3, pp. 14 and 15). Therefore, the Board concludes that the

Respondent failed to properly waste the Demerol by not having it witnessed and thus, the Respondent has violated Connecticut General Statutes Section 20-99(b)(2), as specified in the First Count, subsection 3e.

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, for each of the subsections of the First Count, Section 3, be placed on suspension for a minimum of two (2) years with concurrent probation for a minimum of two (2) years, and an additional two (2) years probation after the completion of suspension, as follows:

- A. as to the First Count, Subsection 3a, (2) years suspension and (4) years probation;
- B. as to the First Count, Subsection 3b, (2) years suspension and (4) years probation;
- C. as to the First Count, Subsection 3c, (2) years suspension and (4) years probation;
- D. as to the First Count, Subsection 3d, (2) years suspension and (4) years probation;
- E. as to the First Count, Subsection 3e, (2) years suspension and (4) years probation;

2. The two year suspension with the four year probationary periods referenced in A, B, C, D, E, shall run concurrently for an effective two (2) year suspension period with concurrent two (2) years probation followed by an additional two (2) years of probation.

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

- A. She shall engage in counseling with a licensed or state certified therapist at her own expense.
- B. She shall provide a copy of this Memorandum of Decision to her therapist.
- C. She shall be responsible for bi-monthly reports from her therapist for all four years of Probation; said reports are due on the first business day of every month.
- D. She shall be responsible for legally defensible 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 bi-monthly for the four year probationary period. Said reports shall be negative for drugs and alcohol.
- E. Said reports cited in (C), (D), and 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 on the first day of the month they are due.

- F. She shall provide a copy of this Memorandum of Decision to her employer when working in nursing.
- G. She shall not accept employment as a nurse for a personnel provider service for the period of her probation.
- H. She may not work in nursing during her two year suspension, and concurrent first two years of probation.
- I. She shall be responsible for the provision of bi-monthly employer reports from her nursing supervisor (i.e. Director of Nursing) due on the first business day after every second month for the third and fourth years of her probation.
- J. Said reports cited in (I) above, shall include documentation of her ability to safely and competently practice nursing in a drug free state, especially the administration of controlled substances. Said reports shall be issued to the Board at the address listed in paragraph (O) below.
- K. 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.
- L. The Connecticut Board of Examiners for Nursing must be informed prior to any change of employment.
- M. The Connecticut Board of Examiners for Nursing must be informed prior to change of address.
- N. The Respondent will bear the responsibility for all reports being received on the dates they are due.

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 suspension and concurrent first two years of probation, followed by an additional two years of probation shall commence on February 1, 1990.

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 *29th* day of *November*, 1989.

BOARD OF EXAMINERS FOR NURSING

BY *Settina M. Murphy RN*

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