

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2002-0131-011-003

vs.

Debra A. Trombetta, LPN, Lic. No. 017359
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 and Motion for Summary Suspension dated March 1, 2002. Board Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Debra A. Trombetta (hereinafter "respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On March 20, 2002 the Board ordered, pursuant to its authority under §4-182(c) and §19a-17(c) of the General Statutes of Connecticut, that respondent's licensed practical nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. The Board issued a Notice of Hearing scheduling a hearing for April 3, 2002. Board Exh. 1.

Respondent was provided notice of the hearing and charges against her. Board Exhibit 1 indicates that the Summary Suspension Order, Notice of Hearing and Statement of Charges were mailed to respondent by certified and first class mail.

The hearing took place on April 3, 2002, in Council Chambers at the Newington Hall, Newington, Connecticut.

Respondent was present during the hearing but was not represented by counsel. Transcript, April 3, 2002 (hereinafter "transcript"), pp. 3-4.

During the hearing, the Department submitted an Amended Statement of Charges. Dept. Exh. 1.

Respondent submitted a written Answer to the Statement of Charges. Resp. Exh. A. During the hearing, respondent orally answered the Amended Statement of Charges. Transcript, pp. 9-12.

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 017359 on May 22, 1978. At all times referenced in the Amended Statement of Charges respondent was the holder of said license. Board Exh. 2; Transcript, p. 9.
2. Pursuant to a Consent Order dated June 6, 2001, the Board ordered that respondent's licensed practical nurse be placed on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversions of Percocet and falsification of controlled substance records. Said Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed health care professional authorized to prescribe medications and that respondent shall submit to random alcohol/drug screens that shall be negative for the presence of alcohol and drugs. Dept. Exh. 2A.
3. Respondent has a prescription for the controlled substance Oxycontin. Respondent takes the Oxycontin because of chronic back and knee pain. Dept. Exh. 2B; Transcript, p. 20.
4. On or about September 2001, respondent ingested the controlled substance methadone, which had been prescribed for respondent's brother. Respondent used the methadone subsequent to her prescription for Oxycontin running out, after ten (10) tablets were appropriated by her son. A urine screen to which respondent submitted on September 9, 2001, tested positive for the presence of the controlled substance methadone. Dept. Exhs. 2B, 2C, 2D; Transcript, p. 9.
5. Urine specimens which respondent submitted for screening on November 8, 2001, January 4, 8, 12 and 31, 2002, February 15, 20, 22, and 26, 2002 and March 2, 16 and 19, 2002 tested positive for the presence of the controlled substance hydrocodone. Dept. Exhs. 2F-2I, 2K-2R.
6. Respondent engages in individual therapy for chemical dependency and participates in a twelve-step program. Transcript, pp. 26-31.

Conclusions of Law and Discussion

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

Debra A. Trombetta held a valid licensed practical nurse license in the State of Connecticut at all times referenced in the Amended Statement of Charges.

The Notice of Hearing and Amended 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, Amended 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.

The **FIRST COUNT, PARAGRAPH 2** of the Amended Statement of Charges alleges that in or about September 2001, respondent abused or utilized Methadone.

The **FIRST COUNT, PARAGRAPH 3** of the Amended Statement of Charges alleges that in or about November 2001, and January, February and March 2002, respondent abused or utilized Hydrocodone.

The **FIRST COUNT, PARAGRAPH 4** of the Amended Statement of Charges alleges respondent's abuse of Methadone and/or Hydrocodone does, and/or may, affect her practice as a licensed practical nurse.

The **FIRST COUNT, PARAGRAPH 5** of the Amended Statement of Charges alleges that respondent's conduct of violating the terms of probation subject his license to disciplinary action.

Respondent admits to the allegations in Paragraphs 1 and 2 but denies the allegations in Paragraphs 3 and 4.

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, incompetence or negligence in performing usual nursing functions . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . . (6) fraud or material deception in the course of professional services or activities

Based on its findings, the Board concludes that respondent's conduct as alleged in the First Count Paragraphs 2, 3 and 4 of the Amended Statement of Charges is proven by a preponderance of the evidence presented. The Board finds that the positive urine screen results are sufficient proof that respondent abuse or utilized Methadone and Hydrocodone. The Board finds the testimony of respondent not credible. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-99(b)(5) and 19a-17.

The **SECOND COUNT, PARAGRAPH 7** of the Amended Statement of Charges alleges that on June 6, 2001, pursuant to a Consent Order, respondent's licensed practical nurse license was placed on probation for a period of four (4) years for drug diversion and for falsifying controlled substance records.

The **SECOND COUNT, PARAGRAPH 8** of the Amended Statement of Charges alleges that the Consent Order required respondent maintain the ability to practice nursing with reasonable skill and safety and that respondent's urine screens shall be negative for drugs and alcohol.

The **SECOND COUNT, PARAGRAPH 9** of the Amended Statement of Charges alleges that on September 9, 2001, respondent tested positive for Methadone.

The **SECOND COUNT, PARAGRAPH 11** of the Amended Statement of Charges alleges that on November 8, 2001, January 4, 8, 12 and 31, 2002, February 15, 20, 22, and 26, 2002 and March 2, 16 and 19, 2002, respondent tested positive for Hydrocodone.

The **SECOND COUNT, PARAGRAPH 12** of the Amended Statement of Charges alleges that respondent's conduct of submitting to urine screening which tested positive for Methadone and/or Hydrocodone constitutes violations of the terms of probation set forth in the Consent Order dated June 6, 2001.

Respondent admits the allegations made in Paragraphs 7, 8, 9 and 10 and respondent denies the allegations made in Paragraph 11.

Based on its findings, the Board concludes that respondent's conduct as alleged in the Second Count of the Amended 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 Consent Order dated June 6, 2001. 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. For the First Count of the of the Amended Statement of Charges, respondent's licensed practical nurse license, No. 017359, is suspended for a period of six (6) months with concurrent probation, followed by an additional probationary period of four (4) years, for a total probationary period of four (4) years and six (6) months.
2. For the First Count of the of the Amended Statement of Charges, respondent's licensed practical nurse license, No. 017359, is suspended for a period of six (6) months with concurrent probation, followed by an additional probationary period of four (4) years, for a total probationary period of four (4) years and six (6) months.
3. 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.
 - 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. Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first year of working as a nurse during the probationary period set forth in this Memorandum of Decision.
 - D. If employed as a nurse, respondent shall cause monthly employer reports to be submitted to the Board by her immediate supervisor during the entire probationary period.
 - E. The employer reports cited in Paragraph D 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.

- F. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or her employer shall notify the Board, within seventy-two (72) hours, of such termination.
- G. 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 P below.
- H. 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.
- I. 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.
- J. Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period.
- K. The therapist reports cited in Paragraph J 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 P below.
- L. 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, inclusive of the period of suspension, 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. Respondent shall be responsible for immediately notifying the laboratory, her therapist and/or personal physician and the Board of any drug(s) she is taking.

(1) There must be weekly alcohol/drug screens during the period of suspension with concurrent probation, and years one and two of the probationary period which follows the suspension. There must be at least two (2) such random alcohol/drug screens monthly during the third and fourth years of the probationary period which follows the suspension.

(2) 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.

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

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

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

- M. 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.
- N. 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.
- O. The Board must be informed in writing prior to any change of address.

P. 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

4. 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 Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board).
5. This Memorandum of Decision becomes effective, and the suspension and probationary periods of respondent's licensed practical nurse license shall commence, on September 15, 2002.

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

Dated at Hartford, Connecticut this 4th day of September 2002.

BOARD OF EXAMINERS FOR NURSING

By 