

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

Department of Public Health

Petition No. 2004-0630-011-013

vs.

Ann Harris LPN, Lic. No. 021550  
Respondent

**MEMORANDUM OF DECISION**

*Procedural Background*

The Board of Examiners for Nursing (hereinafter "the Board") was presented with a Statement of Charges and Motion for Summary Suspension dated July 19, 2004 by the Department of Public Health (hereinafter "the Department"). Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Ann Harris (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).

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 July 21, 2004, 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. Dept. Exh. 1.

The Board issued a Notice of Hearing dated July 21, 2004, scheduling a hearing for August 18, 2004. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent. Dept. Exh. 1.

On August 10, 2004, the Department filed a Motion to Deem Allegations Admitted.

The hearing took place on August 18 and October 6, 2004 and October 20, 2004, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was not represented by counsel. Tr. 8/18/04, p. 2; Tr. 10/6/04, p. 2; Tr. 10/20/04, p. 3.

On August 10, 2004, the Board denied the Motion to Deem Allegations admitted. Respondent submitted an oral Answer to the Statement of Charges. Tr. 8/18/04, pp. 8-9.

On October 20, 2004, the Board vacated the Summary Suspension.

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. Ann Harris of North Haven, Connecticut is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut licensed practical nurse license number 021550. Tr. 8/18/04, pp. 8-9
2. On or about February 5, 2003, the Board ordered a Consent Order in Petition Number 2002-0827-011-041 ("Consent Order") that placed respondent's license on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversion of Oxycodone. Tr. 8/18/04, pp. 8-9.
3. Said order specifically required, among other things, that laboratory reports of random alcohol and drug screens be submitted directly to the Board and the Department. Tr. 8/18/04, pp. 8-9.
4. The Department has not received any laboratory reports of random alcohol and drug screens since December 2003. Tr. 8/18/04, pp. 8-9.

### *Conclusions of Law and Discussion*

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

Ann Harris 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 February 5, 2003, the Board ordered a Consent Order that placed respondent's license on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversion of Oxycodone.

**PARAGRAPH 3** of the Statement of Charges alleges that said order specifically required, among other things, that laboratory reports of random alcohol and drug screens be submitted directly to the Board and the Department.

**PARAGRAPH 4** of the Statement of Charges alleges that the Department has not received any laboratory reports of random alcohol and drug screens since December 2003.

During the hearing of August 18, 2004, respondent admitted all the allegations. However, she contended that she had complied with the Consent Order in that she provided the required number of samples for drug and alcohol testing to the laboratory prescribed by the Department, but the laboratory did not release the test results because respondent failed to pay the necessary fees. Furthermore, respondent's therapist collected two samples and sent them to another laboratory, not authorized by the Department, which were negative for any drugs. Respondent further contended that she was unemployed and her husband was on disability, and, that she was financially incapable of complying with the full requirements of the Consent Order.

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

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraphs 2, 3, and 4 of the Statement of Charges is proven by a preponderance of the evidence presented. However, the Board further concludes that said conduct does not constitute grounds for further disciplinary action pursuant to *Conn. Gen. Stat.* §§20-99(b) and 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:

That the Consent Order in Petition Number 2002-0827-011-041 shall continue in full force and effect.

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

Dated at Newington, Connecticut this 2nd day of March 2005.

BOARD OF EXAMINERS FOR NURSING

By  \_\_\_\_\_

**CERTIFICATION**

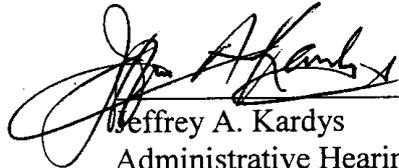
I hereby certify that, pursuant to Connecticut General Statutes §4-180(c), a copy of the foregoing Memorandum of Decision was sent this 3rd day of March 2005, by certified mail, return receipt requested, and first class mail to:

Ann Harris  
600 Skiff Street  
North Haven, CT 06473

Certified Mail RRR #700411160000088335899

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



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Jeffrey A. Kardys  
Administrative Hearings Specialist/Board Liaison  
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