

STATE OF CONNECTICUT  
BOARD OF EXAMINERS FOR NURSING

Department of Public Health

Petition No. 2003-1202-011-045

vs.

Deborah Martinsen, LPN, Lic. No. 021602  
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 January 20, 2004. Dept. Exh. 2. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Deborah Martinsen (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 January 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. 2. The Board issued a Notice of Hearing dated January 21, 2004, scheduling a hearing for February 4, 2004. Dept. Exh. 2.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were sent by certified mail to respondent's last address of record, 2 Clearview Drive New Milford, Connecticut. Dept. Exh. 2. The signature card was not returned but the Notice of Hearing and Statement of Charges were also not returned as undeliverable. Tr. 2/4/04, p. 4.

On January 30, 2004, a State Marshal attempted to make service of the Summary Suspension Order, Notice of Hearing and Statement of Charges at respondent's last known address. The State Marshal found the dwelling boarded up with no signs of anyone living there. Dept. Exh. 1. The State Marshall had previously served the respondent with legal papers at that address. Tr. 2/4/04, p. 3. The State Marshall went to the New Milford Post Office to verify whether the respondent had moved and left a forwarding address, but there was no forwarding address filed for the respondent. Tr. 2/4/04, p. 3.

The Department then called the New Milford Town Clerk to verify whether the residence at the respondent's last known address was still under the respondent's name. Tr. 2/4/04, p.3. The Department learned that the residence was still in the respondent's name, as were two mortgages on the property, neither of which had been released. Tr. 2/4/04, p. 3.

The Department also called the respondent's last known employer, who verified that the respondent's last known address of record was the address where the State Marshall attempted to make service. Tr. 2/4/04, p. 4.

Section 19a-9-18 of the Regulations of Connecticut State Agencies provides that the Notice of Hearing shall be in writing and shall be personally delivered or sent by United States mail, certified or registered, postage prepaid, return receipt requested. The Board complied with this requirement. Dept. Exhs. 1 and 2. In addition, this section provides that the Notice of Hearing shall be effective if delivered or sent to the party's last known address of record on file with the Department. As discussed above, the Notice of Hearing was sent to respondent's last known address of record. Dept. Exhs. 1 and 2. Finally, this section provides that "[i]f such notice is not actually received by a party...service shall be deemed sufficient provided that the department or board has made all reasonable efforts to effectuate notice." The Board made efforts which satisfied this requirement, therefore, notice is deemed sufficient. Transcript, February 4, 2004, p. 3-5.

The hearing took place on February 4, 2004, at the Hartford Hospital Newington Campus, Curtis Building Amphitheater, 181 Patricia M. Genovia Drive, Newington, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. Transcript, February 4, 2004, p. 2.

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 021602 on June 2, 1986. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 2-D.
2. On or about August 5, 2003, respondent was employed as a licensed practical nurse at Laurelridge, a long term care nursing facility located in Ridgefield, Connecticut. Dept. Exh. 2-A.

3. On or about August 5, 2003, while working as a licensed practical nurse on the 3 p.m. to 11 p.m. shift at Laurelridge, respondent diverted one or more doses of Percocet (oxycodone with APAP 5mg/325mg), a schedule 2 narcotic. Dept. Exh 2-A.
4. On August 14 and 17, 2003, while employed by Acucare Nursing Professionals, respondent was assigned to work at Chelsea Place, a long term facility located in Hartford, Connecticut. Dept. Exh. 2-B.
5. On or about August 14, 2003, while working on the 11 p.m. to 7 a.m. shift at Chelsea Place, respondent diverted one or more doses of Vicodin (hydrocodone with APAP), a schedule 3 narcotic. Dept. Exh. 2-B.
6. On or about August 17, 2003, while working on the 3 p.m. to 11 p.m. shift on unit 3A at Chelsea Place, respondent diverted one or more doses of Vicodin (hydrocodone with APAP 7.5mg/750mg), a schedule 3 narcotic. Dept. Exh. 2-B.
7. On or about September 21, 2003, respondent worked as a pool nurse at Cobalt Lodge, a long term care facility located in Cobalt, Connecticut. Dept. Exh. 2-C.
8. On or about September 21, 2003, while working as a pool nurse on the 11 p.m. to 7 a.m. shift at Cobalt Lodge, respondent diverted one or more doses of:
  - a. Vicodin (hydrocodone with APAP 5mg/500mg), a schedule 3 narcotic;
  - b. Duragesic (fentanyl 50 mcg/hr) patch, a schedule 2 narcotic; and/or,
  - c. Percocet (oxycodone with APAP 2.5mg/325mg), a schedule 2 narcotic.

Dept. Exh. 2-C.

### *Conclusions of Law and Discussion*

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

Deborah Martinsen 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 3** of the Statement of Charges alleges that on or about August 5, 2003, while working as a licensed practical nurse on the 3 p.m. to 11 p.m. shift at Laurelridge, Ridgefield, Connecticut, respondent diverted one or more doses of Percocet (oxycodone with APAP 5mg/325mg) a schedule 2 narcotic.

**PARAGRAPH 5** of the Statement of Charges alleges that on or about August 14, 2003, while working on the 11 p.m. to 7 a.m. shift at Chelsea Place, Hartford, Connecticut, respondent diverted one or more doses of Vicodin (hydrocodone with APAP), a schedule 3 narcotic.

**PARAGRAPH 6** of the Statement of Charges alleges that on or about August 17, 2003, while working on the 3 p.m. to 11 p.m. shift on unit 3A at Chelsea Place, respondent diverted one or more doses of Vicodin (hydrocodone with APAP 7.5mg/750mg), a schedule 3 narcotic.

**PARAGRAPH 8** of the Statement of Charges alleges that on or about September 21, 2003, while working as a pool nurse on the 11 p.m. to 7 a.m. shift at Cobalt Lodge, Cobalt, Connecticut respondent diverted one or more doses of:

- a. Vicodin (hydrocodone with APAP 5mg/500mg), a schedule 3 narcotic;
- b. Duragesic (fentanyl 50 mcg/hr) patch, a schedule 2 narcotic; and/or,
- c. Percocet (oxycodone with APAP 2.5mg/325mg), a schedule 2 narcotic.

Respondent did not file an Answer to the Statement of Charges. Pursuant to § 19a-9-20 of the Regulations of Connecticut State Agencies the Board deems the allegations in the Statement of Charges to be admitted.

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 . . . (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. . .

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraphs 3, 5, 6 and 8 of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(b)(2), (5), (7) 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 for Paragraphs 3, 5, 6 and 8 of the Statement of Charges, respondent's licensed practical nurse license, number 021602, is revoked effective the date this Memorandum of Decision is signed by the Board.

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

Dated at Hartford, Connecticut this 16th day of June 2004.

BOARD OF EXAMINERS FOR NURSING

By 