

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

Cheryl Frazier, LPN
License No. 022783

Petition No. 2010-5633

MEMORANDUM OF DECISION

Procedural Background

On April 15, 2011, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") with the Board of Examiners for Nursing ("the Board"). Bd. Exh. 2. The Charges allege violations of Chapter 378 of the General Statutes ("the Statutes") by Cheryl Frazier ("respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes.

Based on the allegations in the Charges, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety and ordered, on May 4, 2011, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, that respondent's licensed practical nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges ("the Order"). Bd. Exh. 1.

On May 11, 2011 the Charges, the Order, and a Notice of Hearing were served on respondent by a State Marshal. Bd. Exh. 3. The hearing was held on May 25, 2011; respondent orally answered the Charges on the record of the hearing. At the hearing, respondent appeared *pro se*; the Department was represented by Attorney Wilan. Following the close of the record on May 25, 2011 the Board conducted fact finding.

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.

Allegations

1. In paragraph one of the Charges, the Department alleges that respondent of Torrington, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut licensed practical nurse license number 022783.
2. In paragraph two of the Charges, the Department alleges that at all relevant times respondent was employed as a licensed practical nurse at Mulberry Gardens in Southington, Connecticut.

3. In paragraph three of the Charges, the Department alleges that during approximately September 2010, while working as a licensed practical nurse at Mulberry Gardens, respondent:
 - a. diverted Vicodin;
 - b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
 - c. falsified one or more Controlled Substance Receipt Records.
4. In paragraph four of the Charges, the Department alleges that in or about September 2010, respondent abused or utilized to excess Vicodin.
5. In paragraph five of the Charges, the Department alleges that respondent's abuse of Vicodin does, and/or may, affect her practice as a licensed practical nurse.
6. In paragraph six of the Charges, the Department alleges the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-99(b), including but not limited to:
 - a. §20-99(b)(2);
 - b. §20-99(b)(5); and/or,
 - c. §20-99(b)(6).

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut LPN license number 022783. Tr. p. 7.
2. Respondent admits the factual allegations in paragraphs 1, 2, 3a, 3c, 4 and 5, but denies paragraph 3b. Tr. p. 7-9.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981). The Department sustained its burden of proof with regard to the allegations contained in paragraphs one, two, three (a), three (c), four and five of the Charges, and failed to sustain its burden with regard to the allegations contained in paragraph three (b) of the Charges.

Section 20-99 of the Statutes provides, in pertinent part, that:

- (a) The Board . . . 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; . . . (6) fraud or material deception in the course of professional services or activities; . . .

As to paragraph 3b of the charges, the Department failed to present sufficient evidence to sustain its burden of proof, that respondent failed to completely and/or accurately document medical or hospital records. Therefore paragraph 3b of the charges is dismissed.

Respondent admits the factual allegations in paragraphs 1, 2, 3a, 3c, 4 and 5. The Board concludes that respondent's conduct as alleged and admitted constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(2)(5)(6) and 19a-17 of the Statutes.

The Board concludes, based on its review of the evidence and respondent's testimony that she is not engaged in substance abuse treatment, that respondent is at high risk of relapse and continued substance abuse at this time. At the present time, respondent cannot safely practice nursing even under the terms of a period of probation.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, that respondent's license number 022783 to practice as a licensed practical nurse in the State of Connecticut is hereby **REVOKED**.

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

Dated at Hartford, Connecticut this 19th day of October, 2011.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard
Patricia Bouffard, Chairperson

CERTIFICATION

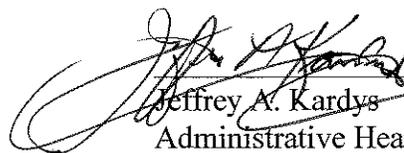
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 19th day of October 2011, by certified mail, return receipt requested and first class mail to:

Cheryl Frazier
21 Pepper Drive
Torrington, CT 06790

Certified Mail 91-7108-2133-3932-0556-3238

and via email to:

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