

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

Department of Public Health

Petition No. 2006-0403-011-009

vs.

Elizabeth Garcia, LPN, Lic. No. 023089

**MEMORANDUM OF DECISION**

Respondent

***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 April 12, 2006. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Elizabeth Garcia (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 April 19, 2006, 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 April 19, 2006, scheduling a hearing for May 3, 2006. 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 state marshal, certified mail return receipt requested and first class mail and to respondent. Dept. Exh. 1.

The hearing took place on May 3 and October 18, 2006, at the Hartford Hospital-Newington Campus, Curtis Building Amphitheater, 181 Patricia M. Genova Drive, Newington, and Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut, respectively.

Respondent was present during the hearing and was not represented by counsel. Transcript, May 3, 2006, p. 1; Tr. 10/18/2006, p. 1.

Respondent submitted an oral Answer to the Statement of Charges. Transcript, 05/03/06, pp. 7-9.

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. Elizabeth Garcia of West Hartford, CT is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 023089. Tr. 05/03/06, p. 7.
2. On August 17, 2005, the Board ordered a Consent Order in Petition number 2005-0125-011-002 ("the Consent Order") that placed respondent's licensed practical nurse license on suspension for a period of four (4) months, with a concurrent probation for a period of four (4) years and four (4) months. Such disciplinary action was based upon respondent's admitted diversions of Percocet, Oxycodone, and/or Tramadol for personal use. Tr. 05/03/06, p. 8.
3. Said Consent 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. Tr. 05/03/06, p. 8.
4. On or about March 8, 2006, respondent abused or utilized to excess cocaine. Tr. 05/03/06, p. 8.
5. On or about March 31, 2006, respondent informed the Department that on or about March 8, 2006, she used cocaine. Tr. 05/03/06, p. 9.
6. In a therapist report dated March 31, 2006, respondent's therapist stated that respondent admitted to having used cocaine. Respondent's therapist further stated that respondent does not appear capable of practicing nursing with reasonable skill and safety. Tr. 05/03/06, p. 9.

### ***Conclusions of Law and Discussion***

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

Elizabeth Garcia 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 1** of the Statement of Charges alleges that Elizabeth Garcia of West Hartford, CT is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 023089.

Respondent admits this charge. Tr. 05/08/06, p. 7.

**PARAGRAPH 2** of the Statement of Charges alleges that on or about March 8, 2005, respondent abused or utilized to excess cocaine.

Respondent admits this charge. Tr. 05/08/06, p. 8.

**PARAGRAPH 6** of the Statement of Charges alleges that on August 17, 2005, the Board ordered a Consent Order that placed respondent's licensed practical nurse license on suspension for a period of four (4) months, with concurrent probation for a period of four (4) years and four (4) months. Such disciplinary action was based upon respondent's admitted diversions of Percocet, Oxycodone, and/or Tramadol for personal use.

Respondent admits this charge. Tr. 05/08/06, p. 8.

**PARAGRAPH 7** of the Statement of Charges alleges that said Consent 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.

Respondent admits this charge. Tr. 05/08/06, p. 8.

**PARAGRAPH 8** of the Statement of Charges alleges that on or about March 31, 2006, respondent informed the Department that on or about March 8, 2006, she used cocaine.

Respondent admits this charge. Tr. 05/08/06, p. 9.

**IN PARAGRAPH 9** of the Statement of Charges the Department alleges that in a therapist report dated March 31, 2006, respondent's therapist stated that respondent admitted to having used cocaine. Respondent's therapist further stated that respondent does not appear capable of practicing nursing with reasonable skill and safety.

Respondent admits this charge. Tr. 05/08/06, p. 9.

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: . . . (4) emotional disorder or mental illness;. (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 all the Paragraphs 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) and 19a-17.

Based on its findings, the Board concludes that respondent's conduct as alleged in the 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. 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. That the Summary Suspension of respondent's licensed practical nurse license number 023089, ordered on April 19, 2006, is terminated on the effective date of this Memorandum of Decision.
2. That for Paragraphs 2, through, and including 10, of the Statement of Charges, respondent's licensed practical nurse license number 023089, is placed on probation for a period of four (4) years.
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.
- D. If employed as a nurse, respondent shall cause employer reports to be submitted to the Board, by her immediate supervisor during the entire probationary period. Employer reports shall be submitted commencing with the report due on the first business day of month following employment as a nurse. Employer reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.
- 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 or suspended, respondent and his employer shall notify the Board within seventy-two (72) hours of such termination or suspension.
- 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 evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.
- 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. (1) 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, 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.
- (2) Respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking. For any prescription of a controlled substance(s) for more than two consecutive weeks, the respondent shall cause the provider prescribing the controlled substance(s) to submit quarterly reports to the Board and the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:
1. A list of controlled substances prescribed by this provider for the respondent;
  2. A list of controlled substance(s) prescribed by other providers;
  3. An evaluation of the respondent's need for the controlled substance;
  4. An assessment of the respondent's continued need for the controlled substance(s).
- (3) There must be at least one (1) such random alcohol/drug screen weekly during the first and fourth years of the probationary period; and, at least two (2) such random alcohol/drug screens monthly during the second and third years of the probationary period.
- (4) 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.

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

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

(6) 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 Office of Practitioner Licensing and Certification of the Department of Public Health or the Board).

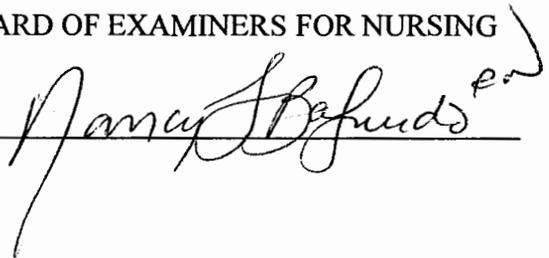
5. This Memorandum of Decision becomes effective, and the four (4) year probation of licensed practical nurse license number 023089 shall commence, on February 1, 2007.

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

Dated at Newington, Connecticut this 17<sup>th</sup> day of January 2007.

BOARD OF EXAMINERS FOR NURSING

By

 Nancy Befudo <sup>en</sup>

**CERTIFICATION**

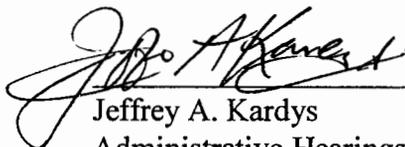
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 18th day of JANUARY 2007, by certified mail, return receipt requested and first class mail, to:

Elizabeth Garcia, LPN  
80 Orchard Avenue  
West Hartford, CT 06119

Certified Mail RRR #70042510000753840930

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  
Department of Public Health  
Public Health Hearing Office