

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

Department of Public Health

Petition No. 2004-0929-011-020

vs.

Barbara Swain, LPN, Lic. No. 023715  
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 a Motion for Summary Suspension dated October 20, 2004. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Barbara Swain (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 October 20, 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 October 20, 2004, scheduling a hearing for November 3, 2004. Dept. Exh. 1. On November 4, 2004, the Board issued a Notice of Continuance and rescheduled the hearing for November 17, 2004. Dept. Exh. 2.

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.

The hearing took place on November 17, 2004, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was not present during the hearing and was not represented by counsel.  
Tr. p. 2.

Respondent did not submit an Answer to the Statement of Charges. During the hearing on November 17, 2004, the Department moved to have the Allegations Deemed Admitted. The Board granted the motion. Tr. pp. 7-8.

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. Barbara Swain is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 023175.

#### *Count One*

2. At all times, respondent was employed as a licensed practical nurse at Lawrence and Memorial Hospital in New London, Connecticut.
3. During approximately September 2004, respondent abused cocaine.
4. Respondent's abuse of cocaine does, and/or may, affect her practice as a licensed practical nurse.

#### *Count Two*

5. On February 18, 2004, the Board issued a Memorandum of Decision in Petition Number 2003-0312-011-010 ("the Order") that placed respondent's licensed practical nurse license on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversions of Oxycodone and Ativan, abuse of cocaine, and falsification of controlled substance records.
6. Said Order specifically provided that 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 six months of working as a nurse during the probationary period.
7. During September 2004, respondent was given access to Pyxis by the hospital pharmacist, and respondent accessed Pyxis for narcotic medications on or about September 21, 22 and 27, 2004.
8. Said Order Specifically provided that respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her.
9. During approximately September 2004, respondent used alcohol and cocaine, and tested positive for benzoylecgonine, a metabolite of cocaine, on or about September 17, 2004.

### *Conclusions of Law and Discussion*

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

Barbara Swain 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 at all times, respondent was employed as a licensed practical nurse at Lawrence and Memorial Hospital in New London, Connecticut.

**PARAGRAPH 3** of the Statement of Charges alleges that during approximately September 2004, respondent abused cocaine.

**PARAGRAPH 5** of the Statement of Charges alleges that respondent's abuse of cocaine does and/or may affect her practice as a licensed practical nurse.

**PARAGRAPH 7** of the Statement of Charges alleges that on February 18, 2004, the Board issued an Order that placed respondent's licensed practical nurse license on probation for a period of four years. Such disciplinary action was based upon respondent's admitted diversions of Oxycodone and Ativan, abuse of cocaine, and falsification of controlled substance records.

**PARAGRAPH 8** of the Statement of Charges alleges that said Order specifically provided that respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties the first six months of working as a nurse during the probationary period.

**PARAGRAPH 9** of the Statement of Charges alleges that during September 2004, respondent was given access to Pyxis by the hospital pharmacist, and respondent accessed Pyxis for narcotic medications on or about September 21, 22 and 27, 2004.

**PARAGRAPH 10** of the Statement of Charges alleges that said Order specifically provided that respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her.

**PARAGRAPH 11** of the Statement of Charges alleges that during approximately September 2004, respondent used alcohol and cocaine, and tested positive for benzoylecgonine, a metabolite of cocaine, on or about September 17, 2004.

Respondent did not submit 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 First Count of 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 . . .

Based on its findings, the Board concludes that respondent's conduct as alleged in Paragraphs 2 through, and including, 12 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.

**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 2 through, and including, 12 of the Statement of Charges, respondent's licensed practical nurse license number 023715, is revoked effective the date this Memorandum of Decision is signed by the Board.

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

Dated at Newington, Connecticut this 16th day of March 2005.

BOARD OF EXAMINERS FOR NURSING

By



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