

Duke Roxburgh
12 Cook Road
Tolland, CT 06084

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

State of Connecticut
Department of Public Health
vs.
Duke Roxburgh, LPN
Licensed Practical Nurse License No. 024164
Respondent.

CASE PETITION NO. 940315-11-015

MEMORANDUM OF DECISION

INTRODUCTION

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 dated November 2, 1995 (Department Exhibit 1-A). The Statement of Charges alleged, in two (2) counts, violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Duke Roxburgh (hereinafter the "Respondent") which would subject the Respondent's Licensed Practical Nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

The Board issued a Notice of Hearing dated November 15, 1995, scheduling a hearing for February 21, 1996 (Department Exhibit 1). The hearing took place on February 21, 1996, in Room B-120, Department of Public Health, 150 Washington Street, Hartford, Connecticut.

During the hearing the Respondent submitted a written Motion to Dismiss. (Respondent's Exhibit A) The Board denied the Respondent's motion. (Hearing Transcript, February 21, 1996, p. 3)

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 and the Board's specialized professional knowledge in evaluating the evidence

FACTS

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Duke Roxburgh, hereinafter referred to as the Respondent, was issued Licensed Practical Nurse License Number 024164 on June 3, 1991. The Respondent was the holder of said license at all times referenced in the Statement of Charges. (Department Exhibit 1-A4)
2. Pursuant to the General Statutes of Connecticut, §4-182(c), the Respondent was provided full opportunity prior to the institution of agency action to show compliance with all lawful requirements for the retention of his license. (Department Exhibit 1-A5)
3. The Respondent was given due notice of the hearing and charges against him. Department Exhibit 1 indicates that the Statement of Charges and Notice of Hearing were delivered by certified mail to the Respondent, care of his Attorney.
4. The Respondent was present during the hearing and was represented by counsel. (Hearing Transcript, February 21, 1996, pp. 2-3)
5. The Respondent submitted a written answer to the Statement of Charges. (Respondent's Exhibit A)
6. On or about September 6, 1991, the Respondent began employment as a licensed practical nurse at Westside Multicare Center, Manchester, Connecticut. (Department Exhibit 1-C24)
7. On or about August 1992, while working as a licensed practical nurse at Westside Multicare Center, the Respondent was counseled concerning the inappropriateness of sexual remarks. (Department Exhibit 1-C24)

8. During October 1993, while working as a licensed practical nurse at Westside Multicare Center, the Respondent made an inappropriate, sexually oriented remark to patient A. L. concerning the size of A.L.'s breasts. (Department Exhibit 1-C9,13) (Hearing Transcript, February 21,1996, pp. 32-33)

9. During October 1993, while working as a licensed practical nurse at Westside Multicare Center, the Respondent touched the upper thigh of patient A.L. and commented that A. L.'s legs were sexy. (Department Exhibit 1-C10) (Hearing Transcript, February 21, 1996, pp. 15-16, 26)

10. During October 1993, while working as a licensed practical nurse at Westside Multicare Center, the Respondent made inappropriate, sexually oriented remarks to patient H.G. The respondent made remarks that patient H. G. should squeeze the breasts of female staff. (Department Exhibit 1-C10, 12-14) (Hearing Transcript, February 21, 1996, pp. 17, 26-27)

DISCUSSION AND CONCLUSIONS

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

Duke Roxburgh 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 sufficiently provided legal notice as mandated by the General Statutes of Connecticut §4-177, §4-182 and §19a-17. The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as §19-2a-1 through §19-2a-30 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided the Respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by the General Statutes of Connecticut §4-182(c).

The FIRST COUNT PARAGRAPH 3 of the Statement of Charges alleges that on or about December 20, 1993, while working as a licensed practical nurse at Westside Multicare Center, Manchester, Connecticut, the Respondent:

- a. made graphic sexually oriented remarks to patient A. L.;
- b. inappropriately touched one or both upper thigh(s) of patient A. L..

The Respondent denies these charges. (Answer: Respondent's Exhibit A)

Based on its review of the evidence, inclusive of the testimony of the Respondent, the Board concludes that while employed as a licensed practical nurse at Westside Multicare Center, Manchester, Connecticut, during October 1993, the Respondent made sexually oriented remarks to patient A. L. and inappropriately touched the upper thigh of patient A.L.. The evidence is consistent that the alleged conduct occurred, and this consistency outweighs any discrepancy between the actual date of occurrence and the date alleged.

The General Statutes of Connecticut §20-99 authorizes the Board to impose disciplinary action against a nurse licensed in the State of Connecticut for conduct which fails to conform to the accepted standards of the nursing profession.

Based on its findings, the Board concludes that the Respondent's conduct as alleged in the First Count Paragraphs 3a and 3b of the Statement of Charges is proven and that said conduct fails to conform to the accepted standards of the nursing profession. Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

The SECOND COUNT PARAGRAPH 6 of the Statement of Charges alleges that on or about December 20, 1993, while working as a licensed practical nurse at Westside Multicare Center, Manchester, Connecticut, the Respondent made graphic sexually oriented remarks to patient H. G.

The Respondent denies these charges. (Answer: Respondent's Exhibit A)

Based on its review of the evidence, inclusive of the testimony of the Respondent, the Board concludes that while employed as a licensed practical nurse at Westside Multicare Center, Manchester, Connecticut, during October 1993, the Respondent made sexually oriented remarks to patient H. G. The evidence is consistent that the alleged conduct occurred, this consistency outweighs any discrepancy between the actual date of occurrence and the date alleged.

The General Statutes of Connecticut §20-99 authorizes the Board to impose disciplinary action against a nurse licensed in the State of Connecticut for conduct which fails to conform to the accepted standards of the nursing profession.

Based on its findings, the Board concludes that the Respondent's conduct as alleged in the Second Count Paragraph 6 of the Statement of Charges is proven and that said conduct fails to conform to the accepted standards of the nursing profession. Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

ORDER

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. That for the First Count Paragraphs 3a and 3b, and the Second Count Paragraph 6 the Statement of Charges, the Respondent's licensed practical nurse license, No. 024164, is placed on probation for a period of eighteen (18) months.
2. If any of the following conditions of probation are not met, the Respondent's licensed practical nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. The 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 current employer(s), within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.

- B. Should the Respondent change employment during the probationary period, he shall provide a copy of this Memorandum of Decision to his employer and said employer shall notify the Board in writing, within thirty (30) days of the commencement of employment, as to receipt of a copy of this Memorandum of Decision.
- C. The Respondent shall not accept employment as a nurse for a personnel provider service, Visiting Nurse Association or any home health care agency and shall not be self-employed as a nurse during the period of his probation.
- D. The Respondent shall cause bi-monthly employer reports to be submitted to the Board by his immediate supervisor during the entire probationary period. Bi-monthly employer reports are due on the first business day of January, March, May, July, September, and November. Employer reports shall commence with the report due November 1, 1996.
- E. The employer reports cited in Paragraph D above shall include documentation of the Respondent's ability to safely and competently practice nursing. Employer reports shall be issued to the Board at the address cited in Paragraph L below.
- F. Should the Respondent's employment as a nurse be voluntarily or involuntarily terminated, the Respondent's employer shall notify the Board, within seventy-two (72) hours, of such termination.
- G. During the first year of the probationary period the Respondent must successfully complete a course of study in Nursing Ethics which shall be a minimum of thirty (30) hours in length. Said course must be approved by the Board prior to its commencement.

- H. During the first year of the probationary period the Respondent must successfully complete a course of study on sexual harassment. Said course must be approved by the Board prior to its commencement.
- I. Certification of the Respondent's successful completion of the courses cited in G and H above shall be submitted to the Board, directly from the educational institution where said courses were taken, within thirty (30) days of the course completion.
- J. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- K. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- L. All correspondence and reports are to be addressed to:

BOARD OF EXAMINERS FOR NURSING
DEPARTMENT OF PUBLIC HEALTH
410 Capitol Avenue, MS #12NUR
P. O. Box 340308
Hartford CT 06134-0308

- 4. Any deviation from the terms of probation without prior written approval by the Board of Examiners for Nursing will constitute a violation of probation which will be cause for an immediate hearing on charges of violating this Order and will subject the Respondent to sanctions under §19a-17(a) and (c) of the General Statutes of Connecticut including, but not limited to, the revocation of his license. Any extension of time or grace period for reporting granted by the Board of Examiners for Nursing shall not be a waiver or preclude the Board's right to take action at a later time. The Board of Examiners for Nursing shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to the Respondent's address of record (most current address reported to the Licensure and Renewal Section of the Division of Medical Quality Assurance of the Department of Public Health or the Board of Examiners for Nursing).

5. This Memorandum of Decision becomes effective, and the eighteen month probation of the Respondent's licensed practical nurse license shall commence, on September 15, 1996.

The Board of Examiners for Nursing hereby informs the Respondent, Duke Roxburgh, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 4th day of September 1996.

BOARD OF EXAMINERS FOR NURSING

By *Jamaya L. Buford*

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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



March 20, 1998

Duke Roxburgh
12 Cook Road
Tolland, CT 06084

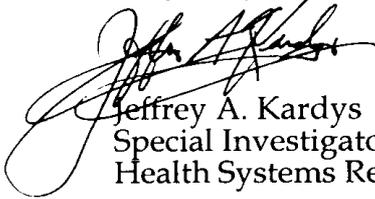
RE: Licensed Practical Nurse License No. 024164

Dear Mr. Roxburgh:

Please be advised that you have successfully fulfilled the terms of probation of your licensed practical nurse license. The probationary status of your license will be removed with an effective date of March 20, 1998.

Should you have any questions concerning this matter, please contact me at 860-509-7623.

Very truly yours,



Jeffrey A. Kardys
Special Investigator
Health Systems Regulation

JAK:

PROBEND.DOC

cc: Debra Tomassone, HSS, Licensure & Registration
Bonnie Pinkerton, Nurse Consultant, Health Systems Regulation
Debra Johnson, Health Program Supervisor
Jennifer Klein, Licensing Examination Assistant



Phone: 860-509-7400

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