



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

August 15, 2012

Beverly A. Burke
343 Chicopee Street, Apt. 1
Chicopee MA 01013-1743

CMRRR No. 91 7108 2133 3932 0602 1348
First Class Mail

Matthew Antonetti, Principal Attorney
Department of Public Health
410 Capitol Avenue, MS #12LEG
PO Box 340308
Hartford, CT 06134-0308

Via Email

RE: **Beverly A. Burke, LPN, 024280**

Petition No. 2010-5520

Dear Ms. Burke and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Board of Examiners for Nursing** in the above-referenced matter.

Sincerely,



Jeffrey A. Kardys, Administrative Hearings Specialist/Board Liaison
Public Health Hearing Office

- c: Lynn A. Rioux, Paralegal Specialist II, Office of the Attorney General
Wendy H. Furniss, Branch Chief, Healthcare Quality and Safety, DPH
Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations, DPH
Bonnie Pinkerton, RN, Nurse Consultant, Department of Public Health, DPH

Phone:



Telephone Device for the Deaf: (860) 509-7191

410 Capitol Avenue - MS # _____

P.O. Box 340308 Hartford, CT 06134

Affirmative Action / An Equal Opportunity Employer

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

Beverly A. Burke, L.P.N.
License No. 024280

Petition No. 2010-5520

MEMORANDUM OF DECISION

Procedural Background

On April 4, 2012, the Department of Public Health ("the Department") filed a Statement of Charges ("Charges") with the Board of Examiners for Nursing ("Board"). Bd. Exh. 1. The Charges allege violations of Chapter 378 of the General Statutes ("Statutes") by Beverly A. Burke ("Respondent") which would subject Respondent's licensed practical nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes.

On April 18, 2012, the Charges and a Notice of Hearing were sent to Respondent by certified and first class mail. Bd. Exh. 2, p. 6. The Charges and Notice of Hearing were delivered to Respondent on April 21, 2012. Bd. Exh. 3, p. 8. On April 26, 2012, the Department received correspondence from Respondent dated February 10, 2012 and April 25, 2012. Attached to this correspondence was a copy of a "Voluntary Agreement Not to Renew or Reinstate," which Respondent refused to sign. In her correspondence, Respondent denied any wrongdoing and wrote on the last page of the Notice of Hearing that she would not attend the hearing. Bd. Exh. 2, pp. 1-6.

The hearing was held on June 20, 2012. Respondent was neither present nor represented during the hearing. Tr. p. 2. Attorney Leslie Scoville represented the Department. Tr. p. 2. Believing Respondent's April 25, 2012 correspondence did not constitute an Answer, the Department orally moved to deem the allegations admitted ("Motion"). After the Board deemed Respondent's letter sufficient to constitute an Answer, the Department withdrew its Motion. Tr. pp. 9-10. The Board noted that § 19a-17(f)¹ of the Statutes permits disciplinary action to be taken against a license issued in Connecticut if disciplinary action has been taken against the same license in another jurisdiction. Tr. pp. 8-10.

¹ Section 19a-17(f) of the Statutes provides in pertinent part, that: [s]uch board ... may take disciplinary action against a practitioner's license or permit as result of the practitioner having been subject to disciplinary action similar to an action specified in subsection (a) of this section by a duly authorized professional disciplinary agency of any state Such board. . . may rely upon the findings and conclusions made by a duly authorized professional disciplinary agency of any state. . . in taking such disciplinary action.

Following the close of the record, 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.² The Board relied on the training and experience of its members in making its findings of fact and conclusions of law. *Pet v. Department of Health Services*, 228 Conn. 651, 667 (1994).

Allegations

1. In paragraph one of the Charges, the Department alleges that Respondent of Massachusetts is, and has been at all times referenced in the Charges, the holder of Connecticut licensed practical nursing license number 024280.
2. In paragraph two of the Charges, the Department alleges that in about July 2009, The Commonwealth of Massachusetts Department of Public Health Professions Licensure, Board of Registration in Nursing ("Massachusetts Board") entered a Consent Agreement with Respondent in Docket No. LN-08-071 (Massachusetts Agreement"). The Massachusetts Agreement is based on allegations that Respondent failed to adequately assess and/or treat a patient's leg dressing, failed to adequately complete medical documentation and failed to adequately assess patients from about July 2007 through about August 2007 at Heritage Hall South in Agawam, Massachusetts.
3. In paragraph three of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to § 19a-17(f) and/or § 20-99(b) of the Statutes.

Findings of Fact

1. Respondent of Massachusetts is, and has been at all times referenced in the Charges, the holder of Connecticut licensed practical nursing license number 024280. Bd. Exh. 1.
2. In about July 2009, the Massachusetts Board entered the Massachusetts Agreement with Respondent. The Massachusetts Agreement is based on allegations that Respondent failed to adequately assess and/or treat a patient's leg dressing, failed to adequately complete medical documentation and failed to adequately assess patients from about July 2007 through about August 2007 at Heritage Hall South in Agawam, Massachusetts. Dept. Exh. 1, pp. 24-28; Tr. pp. 8-10.

² The Board's jurisdiction to adjudicate this case is established by § 19a-14a of the Statutes which provides that for the purposes of an investigation or imposition of disciplinary action, an expired license is considered valid if the investigation or the disciplinary action is commenced within 18 months of the person's having held a valid license. In the instant case, Respondent's license expired on March 31, 2012. The Department began its investigation of Respondent's alleged misconduct on September 20, 2010 and the Charges were filed on April 4, 2012. Dept. Exh. 1; Bd. Exh. 1. Thus, both actions occurred within 18 months of the date that Respondent's license expired.

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, 834 (2008). The Department sustained its burden of proof with regard to all of the allegations contained in 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;

Through the Massachusetts Agreement, the Department established by a preponderance of the evidence that Respondent's failure to adequately assess and/or treat a patient's leg dressing, failure to adequately complete medical documentation, and failure to adequately assess patients from about July 2007 through about August 2007 at Heritage Hall South in Agawam, Massachusetts, constituted a failure to comply with the Massachusetts Board's Standards of Conduct. Dept. Exh. 1, p. 24. The Massachusetts Board subsequently took disciplinary action, resulting in the conditional probation of Respondent's license for one year. Dept. Exh. 1, pp. 24-28. Although Respondent has satisfied only one quarter of her one-year probation in Massachusetts, the Massachusetts Board has determined it will take no further action against Respondent's license because she is no longer working as a nurse. Dept. Exh. 1, p. 35.

Section 19a-17(f) of the Statutes authorizes the Board to take action against a practitioner's license if the Board of another state has taken similar action against the practitioner's license, thereby acknowledging the parity in judgment among such Boards on matters of practitioner discipline. The Massachusetts Board determined that Respondent's failure to comply with its Standards of Conduct necessitated the decision to place Respondent's license on probation. Dept. Exh. 1, pp. 24-28.

Although Respondent's license expired on March 31, 2012, and has not been renewed, the Board nevertheless has jurisdiction to take disciplinary action against Respondent's license pursuant to § 19a-14a of the Statutes. This section authorizes disciplinary action against expired

licenses so long as the disciplinary action commences within 18 months of the expiration of the license. In this case, the Charges commencing the disciplinary action were filed on April 4, 2012, well within the 18 month period.

Respondent has stated in her correspondence that she has no intention of returning to Connecticut to work as a nurse. Bd. Exh. 2. Nevertheless, Department stressed that should Respondent seek reinstatement of her Connecticut license, she would be free to work as a licensed practical nurse in Connecticut and said license would remain unencumbered, provided no disciplinary action has been imposed on her Connecticut license. The Department urged the Board to take action against Respondent's Connecticut license due to the serious nature of the charges filed by the Massachusetts Board. Dept. Exh. 1, pp. 16-23; Tr. pp. 8-11.

The Board concludes that the action against Respondent's Massachusetts license alleged in paragraph two of the Charges is proven by a preponderance of the evidence presented and that said conduct constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(2) and 19a-17 of the Statutes.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders the following:

1. If, at any time, Respondent's L.P.N. license no. 024280 is reinstated by the Department, said license shall be placed on probation for a period of one year under the following terms and conditions:
 - A. In the event Respondent resumes the practice of nursing in Connecticut, she shall provide the Department with 90 days' prior written notice of her intent to return.
 - B. 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 quarterly during the probationary period.
 - C. The employer reports cited in Paragraph B. 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 F. below.

- D. In the event Respondent is not employed as a nurse for periods of 30 consecutive days or longer, she shall notify the Department in writing. Such periods of time shall not be counted in reducing the probationary period covered by this Order and such terms shall be held in abeyance. During such time period, Respondent shall not be responsible for complying with the terms of probation of this Order. In the event Respondent resumes the practice of nursing, she shall provide the Department with 15 days prior written notice.
- E. The Board must be informed in writing prior to any change of address.
- F. All communications, payments if required, 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

- 2. 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 Statutes, 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).

This Memorandum of Decision becomes effective on the date signed by the Board of Examiners for Nursing.

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

Dated at Hartford, Connecticut this 15th day of August, 2012.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard, D.N.Sc.
Patricia C. Bouffard, D.N.Sc., Chairperson

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 15th day of August 2012, certified mail return receipt requested mail and first class mail to:

Beverly A. Burke
343 Chicopee Street, Apt. 1
Chicopee MA 01013-1743

and E-Mail to:

Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
410 Capitol Avenue
P. O. Box 340308
Hartford CT 061343-0308



Janice E. Wojick, Hearings Liaison