

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

Department of Public Health

Petition No.2000-0605-011-017

vs.

David Withers, LPN, Lic. No. 024768  
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 Motion for Summary Suspension dated November 7, 2000. (Dept. Exh. 1.) The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by David Withers (hereinafter "respondent") which would subject respondent's Licensed Practical Nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

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 November 15, 2000, 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. 2.)

The Board issued a Notice of Hearing dated November 15, 2000 scheduling a hearing for December 6, 2000. (Dept. Exh. 2.)

Respondent was provided notice of the hearing and charges against him. Department Exhibit 2 indicates that the Notice of Hearing and Statement of Charges were served on respondent by deputy sheriff on November 22, 2000 and by certified mail on November 17, 2000.

The hearing took place on December 6, 2000 in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. (Transcript, December 6, 2000, p. 2.)

Respondent failed to submit an Answer to the Statement of Charges.

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. Respondent was issued Licensed Practical Nurse license number 024768 on June 1, 1993. Respondent was the holder of said license at all times referenced in the Statement of Charges. (Dept. Exh.1-B.)
2. At all times respondent was employed as a licensed practical nurse at Roncalli Health Care in Willimantic, Connecticut. (Dept. Exh.1-A.)
3. From approximately January 2000 to May 2000, while working as a licensed practical nurse at Roncalli Health Care, respondent:
  - a. diverted Roxilox, APAP w/ codeine No. 3, oxycodone/APAP;
  - b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
  - c. falsified one or more Controlled Substance Receipt Records. (Dept. Exh.1-A; Transcript, December 6, 2000, pp. 7-13.)
4. From approximately January to May 2000, respondent abused or utilized to excess Roxilox, APAP w/codeine no. 3, oxycodone, and oxycodone/APAP. (Dept. Exh.1-A.)

***Conclusions of Law and Discussion***

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

David Withers 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 the General Statutes of Connecticut §4-177(a) and (b), and §4-182(c). The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut 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 his license as required by the General Statutes of Connecticut §4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

Respondent did not submit an Answer to the Statement of Charges. Pursuant to §19-9-20 of the Regulations of Connecticut State Agencies the Board deems the allegations in 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 performing 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 . . . .

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 constitutes violations of the General Statutes of Connecticut §20-99(b)(2)(5) and (6). Therefore, respondent's Licensed Practical Nurse license 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:

That for Paragraphs 3, 4, and 5 of the Statement of Charges, respondent's Licensed Practical Nurse license, number 024768, is revoked effective the date this Memorandum of Decision is signed by the Board of Examiners for Nursing.

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

Dated at Wethersfield, Connecticut this 21st day of February 2001.

BOARD OF EXAMINERS FOR NURSING

By 