STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

January 21, 2010

Robert Lacobelle, Esq.
Byrne & Lacobelle
799 Silver Lane
Trumbull, CT 06611

Certified Mail RRR #91 7108 2133 3931 8707 8393

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
PO Box 340380
Hartford, CT 06134-0308

Inter-Departmental Mail

RE: Jeroline Kelly, LPN - Petition No. 2006-0714-011-021

Dear Attorney Lacobelle 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: Michael J. Purcaro, Management Team Leader, Administrative Branch
Wendy Furniss, Branch Chief, Healthcare Systems
Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
Lynn A. Rioux, Paralegal Specialist II, Office of the Attorney General
Bonnie Pinkerton, RN, Nurse Consultant, Department of Public Health

Phone: *860-509-7648* *FAX 860-509-7553*
Telephone Device for the Deaf: (860) 509-7191
410 Capitol Avenue - MS # *13 PHO*
P.O. Box 340308 Hartford, CT 06134
Affirmative Action / An Equal Opportunity Employer

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH

Jeroline Kelly, LPN
License No. 025365

Petition No. 2006-0714-011-021

MEMORANDUM OF DECISION

Procedural Background

On June 27, 2008, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") with the Board of Examiners for Nursing ("the Board"). Dept. Exh. 1. The Charges allege violations of certain provisions of Chapter 378 of the General Statues ("the Statutes") by Jeroline Kelly ("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 July 16, 2008, the Charges and a Notice of Hearing were sent to respondent by certified and first class mail. Dept. Exh. 1.

Respondent filed a written Answer to the allegations dated July 30, 2008. Board Exh. 1.

The hearing was held on March 4, May 6, and June 3, 2009. During the hearing, the respondent was represented by Attorney Robert Lacobelle and the Department by Attorney Diane Wilan.

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.

Allegations

1. In paragraph one of the Charges, the Department alleges that the respondent, of Trumbull, CT, is, and has been at all times referenced in the Charges, the holder of Connecticut licensed practical nurse license number 025365.

2. In paragraph two of the Charges, the Department alleges that at all relevant times, the respondent was employed as a licensed practical nurse at St. Vincent's Special Needs Children's Residential Services in Trumbull, CT ("St. Vincent's").

3. In paragraph three of the Charges, the Department alleges that on or about July 4, 2006, while working as a licensed practical nurse at St. Vincent's, the respondent

   a. was found sleeping while on duty
   b. failed to respond to a resident's Pulse Ox monitor that was beeping; and/or,
   c. pre-poured medications and documented in the medication administration record (MAR) that she had administered medications although she had not.

4. In paragraph four of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the § 20-99(b) of the Statutes, including but not limited to § 20-99(b)(2).

Findings of Fact

1. The respondent admits paragraphs 1 and 2 of the Charges. Board Exh. 1.

2. The evidence presented is insufficient to establish that the respondent was found sleeping while on duty; failed to respond to a resident's Pulse Ox monitor that was beeping; or that she pre-poured medications. Tr., May 6, 2009, pp. 77- 83; 162.

3. On or about July 4, 2009, while working as a licensed practical nurse at St. Vincent's, respondent documented in the MAR for patient S.O. that she had administered the medication Prevacid although she had not. Dept. Exh.7, C-27; Tr., May 6, 2009, p. 156.

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 (2008); *Swiller v. Comm'r of Pub. Health,* Conn. Super. LEXIS 2844 (Conn. Super. Ct. Oct. 5, 1995); *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (U.S. 1981).

The Department sustained its burden of proof with regard to the allegations contained in paragraphs 1, 2, and a portion of 3c of the Charges, but failed to sustain its burden of proof with regard to the allegations contained in paragraphs 3a, 3b, and a portion of 3c of the Charges. In attempting to prove the allegations in paragraphs 3a and 3b of the Charges, the Department presented the testimony of Stuart Grimes, who was St. Vincent's assistant Operations Manager at the time of the alleged malfeasance. The board did not

find his testimony credible, especially since it was inconsistent with his prior written statements.

Regarding the allegations in paragraph 3c that respondent (1) pre-poured medications and (2) documented in the MAR that she administered medications that she had not in fact administered, the Department only sustained its burden on the second of these allegations. The department's evidence supporting these allegations consisted of the testimony of Dawn Perodeau, nurse manager at St. Vincent's. Ms. Perodeau testified that she was summoned by Mr. Grimes to St. Vincent's at about 3:30 a.m. on the morning of July 4, 2007, and that she must have arrived there forty to fifty minutes later or between 4:15 and 4:20 a.m., as she lives roughly thirty minutes from the facility. She further testified that she did not see pre-poured medications at the facility that morning and that she spent considerable time away from the respondent. She testified that her statement to a department of children and families' investigator that the respondent pre-poured medications was based on her opinion that the respondent could not have poured and administered the medications and performed the feedings that the respondent had charted between the time that Mr. Grimes summoned Ms. Perodeau and the time that Ms. Perodeau relieved the respondent of her duties that morning. See, e.g., Tr., May 6, 2009, p.162. Unlike Ms. Perodeau, the Board is unable to conclude from the available evidence that the respondent could not have completed pouring and administering the medications in the time between her arrival and the Respondent's departure. Thus, the Department failed to establish the allegation that the respondent pre-poured medications.

Ms. Perodeau credibly testified that the respondent informed her that the respondent documented administering prevacid to patient s when the respondent had not. Tr., May 6, 2009, p.166. Hence, the department established that the respondent falsely documented the administration of medication.

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 . . .

The Board concludes that the respondent's conduct in charting medications not administered constitutes conduct which fails to conform to the accepted standards of the nursing profession within the meaning of § 20-99 and, thus, is ground for disciplinary action pursuant to §§ 20-99(b)(2) and 19a-17 of the Statutes. The Board finds that respondent can practice nursing with reasonable skill and safety under the terms of this Order.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, with respect to license number 025365 held by Jeroline Kelly, as follows:

1. Respondent's license shall be placed on probation for a period of six (6) months under the following terms and conditions. If any of the 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. Respondent shall not be employed as a nurse for a personnel provider service, assisted living services agency, homemaker-home health aide agency, or home health care agency, and shall not be self-employed as a nurse for the period of probation.
   - 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. During the first three (3) months of the probationary period respondent, at her expense, shall successfully complete a course in medication administration and documentation pre-approved by the Board. Respondent shall provide proof to the satisfaction of the Board of her successful completion of the course within thirty days of completion.

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 entire probationary period.

E. During the entire probationary period, respondent's medication administration techniques and documentation shall be observed by a nursing supervisor.

F. The employer reports cited in Paragraph D above shall include documentation of respondent's ability to safely and competently practice nursing including the medication administration and documentation. Employer reports shall be submitted directly to the Board at the address cited in Paragraph Q below.

G. 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.

H. 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 Q below.

I. The Board must be informed in writing prior to any change of address.

J. 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
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 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).

3. This Memorandum of Decision becomes effective, and the six (6) month probation of licensed practical nurse license no. 025365 shall commence, on February 1, 2010.

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

Dated at Hartford, Connecticut this 20th day of January, 2010.

BOARD OF EXAMINERS FOR NURSING

By Patricia C Bruff-cl

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 26th day of January 2009, by certified mail, return receipt requested to:

Robert Lacobelle, Esq.
Byrne & Lacobelle
799 Silver Lane
Trumbull, CT 06611

Certified Mail RRR #91 7108 2133 3931 8707 8393

and by Inter-Departmental Mail to:

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

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

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

August 18, 2010

Jeroline Kelly, LPN
92 Ochsner Place
Trumbull, CT 06611-4717

Re: Memorandum of Decision
Petition No. 2006-0714-011-021
License No. 025365

Dear Ms. Kelly:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective August 1, 2010.

Notice will be sent to the Department's Licensure and Registration section to remove all restrictions from your license related to the above-referenced Memorandum of Decision.

Please be certain to retain a copy of this letter as documented proof that you have completed your license probation.

Thank you for your cooperation during this process, and good luck to you in the future.

Very truly yours,

Bonnie Pinkerton

Bonnie Pinkerton, RN, Nurse Consultant
Practitioner Licensing and Investigations Section

cc: J. Filippone
J. Wojick

Phone: (860) 509-7400
Telephone Device for the Deaf (860) 509-7191
410 Capitol Avenue - MS # 12HSR
P.O. Box 340308 Hartford, CT 06134
An Equal Opportunity Employer