

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

William DiChello, LPN
License No. 025913

Petition No. 2009-20091225

MEMORANDUM OF DECISION

Procedural Background

On July 7, 2011 the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") with the Board of Examiners for Nursing ("the Board"). Bd. Exh. 1. The Charges allege violations of Chapter 378 of the General Statutes ("the Statutes") by William DiChello, LPN ("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 20, 2011, the Charges and a Notice of Hearing were sent to respondent by certified and first class mail. Bd. Exh. 2. The hearing was held on October 5, 2011 and October 19, 2011. Respondent was neither present nor represented during the hearing. Tr.10/5/11, p. 2, Tr. 10/19/11, p. 2. Attorney Linda Fazzino represented the Department. Tr. 10/5/11, p. 2, Tr. 10/19/11, p. 2.

Respondent did not file an Answer to the Charges. Tr. 10/19/11, pp. 5-6. During the October 19, 2011 hearing, the Board granted the Department's Motion to Deem the Allegations Admitted. Tr. 10/19/11, pp. 5-6. Following the close of the record on October 19, 2011, the Board conducted fact-finding.

After review of the record, the hearing was reopened to provide additional notice of the charges to respondent and to allow respondent to be present at a hearing.

On December 8, 2011, the Charges and a Notice of Hearing were sent to respondent by certified and first class mail. The certified mail was returned by the United States Postal Service as "unclaimed." Bd. Exh. 7. The first class mail was not returned. Tr. 01/18/2012, p. 6.

Section 19a-9-18 of the Regulations of Connecticut State Agencies provides that the Notice of Hearing shall be in writing and shall be personally delivered or sent by United States mail, certified or registered, postage prepaid, return receipt requested. The Board complied with this requirement. Bd. Exhs. 2 and 7. In addition, this section provides that the Notice of Hearing shall be effective if delivered or sent to the party's last known address of record on file with the Department. Finally, this section provides that "[i]f such notice is not actually received by a party...service shall be deemed sufficient provided that the department or board has made all reasonable efforts to effectuate notice." Reasonable efforts were made to satisfy this requirement, therefore, notice is deemed sufficient.

The reopened hearing was held on January 18, 2012. Respondent was neither present nor represented during the hearing. Attorney Linda Fazzina represented the Department.

Tr. 01/18/2012, p. 3.

During the January 18, 2012 hearing, the Board granted the Department's Motion to Deem the Allegations Admitted. Tr. 01/18/12, pp. 8-9. Following the close of the record on January 18, 2012, 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 respondent is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 025913.¹
2. In paragraph two of the Charges, the Department alleges that respondent was employed as a nurse at Hewitt Health and Rehabilitation Center ("the facility") in Shelton, CT.
3. In paragraph 3(a) of the Charges, the Department alleges that respondent administered Percocet to a patient, on one (1) or more occasions in or about June and/or July 2009, after the medication order had been discontinued.
4. In paragraph 3(b) of the Charges, the Department alleges that on or about July 10, 2009 respondent administered a Fentanyl patch for a patient a day earlier than scheduled.
5. In paragraph 3(c) of the Charges, the Department alleges that on or about July 17, 2009, respondent failed to perform a dressing change for a patient's coccyx wound.
6. In paragraph 3(d) of the Charges, the Department alleges that respondent failed to secure signature(s) for the disposal of Fentanyl patches, on one (1) or more occasions in or about July 2009.
7. In paragraph four of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to § 20-99, including but not limited to, § 20-99(b)(2).

¹ 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 April 30, 2011. The Department began its investigation of respondent's alleged misconduct in August 2009 and the Charges were filed in July 2011. Thus, both actions occurred within 18 months of the date respondent's license expired.

Findings of Fact

1. The Department provided respondent with reasonable and adequate written notice of the hearing and the allegations contained in the Statement of Charges. Bd. Exhs. 2 and 7 Tr. 10/19/11, pp. 3-4; Tr. 01/18/2012, p. 6.
2. Respondent did not file an Answer. Tr. 10/19/11, pp. 5-6.
3. The factual allegations contained in paragraphs one through four of the Charges are deemed admitted and true. Tr. 10/19/11, pp. 5-6, Tr. 01/18/12, pp. 8-9.

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 Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981).

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) . . . (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions; . . .

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 §4-182(c) of the Statutes. 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 deemed the allegations in the Charges to be admitted.

The Board concludes that respondent's conduct as alleged in paragraphs one through four of the Charges and deemed to be admitted and true, constitutes grounds for disciplinary action pursuant to §§20-99(b) 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 that respondent's license number 025913 to practice as a licensed practical nurse in the State of Connecticut is hereby **REVOKED**.

The Board of Examiners for Nursing hereby informs respondent, William DiChello, and the Department of Public Health of the State of Connecticut of this decision, which becomes effective on the date signed by the Board of Examiners for Nursing.

Dated at Hartford, Connecticut this 21st day of March, 2012.

BOARD OF EXAMINERS FOR NURSING

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

CERTIFICATION

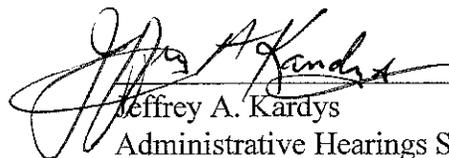
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 22nd day of March 2012, by certified mail, return receipt requested and first class mail to:

William DiChello
511 Bee Street
Meriden, CT 06450

Certified Mail 91-7108-2133-3936-6805-9934

and via email 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
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