

Christine Custer
33 Fellows Road # 9
Oakdale, CT 06370

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

State of Connecticut
Department of Public Health
vs.
Christine Custer, RN
Licensed Practical Nurse License No. 026656
respondent.

CASE PETITION NO. 991022-011-031

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 5, 1999 (Dept. Exh. 2). The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Christine Custer (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, accompanying affidavits, and reports, the Board found that the continued practice of nursing by respondent presented a clear and immediate danger to public health and safety. On December 1, 1999, the Board ordered, pursuant to its authority under §4-182(c) and §19a-17(c) of the General Statutes of Connecticut, that the Licensed Practical Nurse license of respondent 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 December 1, 1999, scheduling a hearing for December 15, 1999. (Dept. Exh. 2)

Respondent was provided notice of the hearing and charges against her. Department Exhibit 2 indicates that the Notice of Hearing and Statement of Charges were delivered by certified mail to respondent.

The hearing took place on December 15, 1999, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing but was not represented by counsel. Transcript, December 15, 1999, p.4.

During the hearing the Department presented a Motion to Deem Allegations Admitted. Dept. Exh. 1.

The Department withdrew its Motion to Deem Allegations Admitted and respondent verbally answered the Statement of Charges. Transcript, December 15, 1999, pp. 7, 9-12.

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 026656, on February 21, 1997 and was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 2-A; Transcript, December 15, 1999, p. 10.
2. In or about 1999, respondent was employed as a licensed practical nurse at Greentree Manor, Waterford, Connecticut. Dept. Exh. 2; Transcript, December 15, 1999, p. 10.
3. In or about 1999, while working as a licensed practical nurse at Greentree Manor, respondent diverted for her own personal use the controlled substances of hydrocodone and oxycodone. Dept. Exh. 2-B-6; Transcript, December 15, 1999, p. 10.
4. While working as a practical nurse at Greentree Manor, respondent accomplished the diversion of controlled substances by falsifying controlled substance receipt records. Respondent signed out doses of medications indicating administration to patients but kept the medications for herself. Occasionally respondent also substituted a similar looking vitamin for the controlled substances she diverted. Dept. Exh. 2-B27; Transcript, December 15, 1999, pp. 10-12.
5. Prior to her at Greentree Manor, respondent diverted narcotics from other nursing homes at which she worked as a licensed practical nurse. Dept. Exh. 2-B27.
6. From October 7, 1999 to November 22, 1999, respondent underwent substance abuse treatment at the Stonington Institute, North Stonington, Connecticut. Respondent has been receiving individual therapy for substance abuse and has been participating in Narcotics Anonymous and the support group Nurses for Nurses. Respondent Exh. A.; Transcript, December 15, 1999, pp. 14, 30, 38.

Conclusions of Law and Discussion

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

Christine Custer held a valid Licensed Practical Nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Summary Suspension Order, 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 her 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.

The FIRST COUNT, PARAGRAPH 2 of the Statement of Charges alleges that in or about 1999, while working as a licensed practical nurse at Greentree Manor, Waterford, Connecticut, respondent:

- a. diverted hydrocodone and oxycodone for her own personal use;
- b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
- c. falsified one or more Controlled Substance Receipt Records;

The FIRST COUNT, PARAGRAPH 3 of the Statement of Charges alleges that in 1999, respondent abused or excessively used hydrocodone and oxycodone.

The FIRST COUNT, PARAGRAPH 4 of the Statement of Charges alleges that respondent's abuse of hydrocodone and oxycodone does, and/or may affect her practice as a licensed practical nurse.

The SECOND COUNT, PARAGRAPH 7 of the Statement of Charges alleges that that in or about 1999, while working as a licensed practical nurse at Greentree Manor, respondent provided incompetent and/or negligent care in performing her licensed practical nursing duties, by signing out narcotics for herself instead of administering them to patients. Occasionally, she substituted other substances for the narcotics which she then administered to patients.

Respondent admits these charges. Transcript, December 15, 1999, pp. 9-12.

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 and respondent's admissions, the Board concludes that respondent's conduct as alleged in the First Count Paragraphs 2, 3, and 4, and the Second Count Paragraph 7 of 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:

1. For Paragraphs 2, 3 and 4 of the First Count and Paragraph 7 of the Second Count of the Statement of Charges, respondent's licensed practical nurse license, No. 026656, is suspended for a period of nine (9) months with concurrent probation, followed by additional probation for a period of three (3) years.
2. If any of the following conditions of probation are not met, respondent's practical nurse license may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
 - A. During the period of probation the Board shall pre-approve respondent's employment or change of employment within the nursing profession.
 - 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. Respondent shall not administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first year of working as a nurse during the probationary period.
- D. If employed as a nurse, respondent shall cause monthly employer reports to be submitted to the Board by her immediate supervisor during the entire probationary period.
- E. The employer reports cited in Paragraph D 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 P below.
- F. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or her employer shall notify the Board, within seventy-two (72) hours of such termination.
- G. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist during the entire period of probation.
- H. Respondent shall provide a copy of this Memorandum of Decision to her therapist. The Board shall be notified in writing by her therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.
- I. Respondent shall cause monthly evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports are due commencing with the report due on the first business day of April, 2000.
- J. The therapist reports cited in Paragraph I above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph P below.

- K. At her expense, respondent shall be responsible for submitting to random chain of custody urine and/or blood screens for alcohol and drugs for the entire probationary period, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board of Examiners for Nursing to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that chain of custody procedures must be followed throughout the screening process. Respondent shall be responsible for immediately notifying the laboratory, her therapist and/or personal physician and the Board of Examiners for Nursing of any drug(s) she is taking.

There must be at least four (4) such random alcohol/drug screens monthly during the entire probationary period. Reports of said random alcohol/drug screens are due on the first day of the month commencing with the reports due on the first business day of April, 2000.

Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

Random alcohol/drug screens must include testing for the following substances:

- Amphetamines
- Barbiturates
- Benzodiazepines
- Cannabinoids (THC Metabolites)
- Cocaine
- Meperidine (Demerol)
- Methadone
- Methaqualone
- Opiates (Metabolites)
- Phencyclidine (PCP)
- Propoxyphene
- Ethanol (alcohol)

Reports of random alcohol and drug screens shall be submitted directly to the Board, at the address cited in Paragraph P below, by respondent's therapist, personal physician or the testing laboratory.

- L. Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.

- M. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.
- N. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of employment.
- O. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- P. All 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

- 3. Any deviation from the terms of probation, without prior written approval by the Board of Examiners for Nursing, 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 of Examiners for Nursing shall not be a waiver or preclude the Board's right to take subsequent action. 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 respondent's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department of Public Health or the Board of Examiners for Nursing).
- 4. 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, Christine Custer, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Wethersfield, Connecticut this 15th day of March, 2000.

BOARD OF EXAMINERS FOR NURSING

By 

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