

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

Department of Public Health

Petition No. 2005-0726-011-028

vs.

Judy Smith, LPN, Lic. No. 026732
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 October 26, 2006. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Judy Smith (hereinafter “respondent”) which would subject respondent’s licensed practical nurse license to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

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 1, 2006, 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. 1.

The Board issued a Notice of Hearing dated November 1, 2006, scheduling a hearing for November 15, 2006. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Summary Suspension Order, Notice of Hearing and Statement of Charges were served on respondent by State Marshal November 5, 2006. Dept. Exh. 1.

The hearing began on November 15, 2006 at which time respondent requested a continuance to seek legal counsel. Respondent’s request was granted. Transcript #2, November 15, 2006.

The hearing resumed on February 7, 2007. Due to transportation problems respondent was not present on February 7, 2007. Respondent requested that the hearing be reopened. Respondent's request was granted and the hearing was rescheduled to March 7, 2007. Resp. Exh. A; Board Exh. 1.

Respondent was present during the hearing on March 7, 2007 and orally answered the Statement of Charges. The Board continued the hearing and recommended that respondent undergo a psychiatric evaluation. Transcript, March 7, 2007, pp. 5-6, 28-33.

On July 26, 2007 the Department filed a motion to reopen citing respondent's failure to comply with the recommendation for a psychiatric evaluation. The Board granted the motion. Board Exh. 2.

The hearing resumed on September 19, 2007. Respondent was present during the hearing. The Board again continued the hearing and instructed respondent to undergo a psychiatric evaluation conducted by an approved evaluator. Transcript, September 19, 2007, pp. 19-20.

The hearing was rescheduled to January 16, 2008. Notice of the rescheduled hearing was delivered to respondent by certified mail on October 4, 2007. Board Exh. 3.

Respondent was not present for the hearing dated on January 16, 2008 and was not represented by counsel. Transcript, January 16, 2008, p. 2.

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 1 of the Statement of Charges, the Department alleges that Judy Smith, L.P.N. of Groton, Connecticut is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 026732.
2. In paragraph 2 of the Statement of Charges, the Department alleges that respondent is, and for years has been, dependent on alcohol, drinks to excess, and is not in a recovery program.

3. In paragraph 3 of the Statement of Charges, the Department alleges that respondent's abuse of alcohol does, and/or may, impair her practice as a licensed practical nurse.
4. In paragraph 4 of the Statement of Charges, the Department alleges the above-described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-99(b)(5).

Findings of Fact

1. Judy Smith, L.P.N. of Groton, Connecticut is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 026732. Transcript, March 7, 2007, p. 5.
2. On December 23, 2003, respondent was arrested for driving while intoxicated. Due to respondent's failure to appear in court respondent was rearrested on July 9, 2006. Dept. Exh. 1
3. On November 24, 2004, respondent admitted herself to the Stonington Institute, North Stonington, Connecticut for treatment of alcohol abuse. Respondent reported a history of alcohol abuse since at least age twenty-six and most recent daily alcohol abuse for a period of two to three months. Respondent also reported a positive psychiatric history. At admission respondent appeared depressed, withdrawn and anxious. Dept. Exh. 1-tab E (sealed).
4. Respondent was discharged from the Stonington Institute on December 23, 2004. Her discharge prognosis was poor due in part to her refusal to engage in outpatient services. Dept. Exh. 1-tab E (sealed).
5. Respondent denies she has a drug or alcohol problem but acknowledges she has a potential for alcohol abuse. Respondent does not participate in a 12-step program. Transcript, March 7, 2007, pp. 14-18.
6. Respondent failed to undergo a psychiatric evaluation as recommend by the Board to determine her fitness to practice nursing. Transcript, January 6, 2008.

Conclusions of Law and Discussion

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

Judy Smith 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 *Conn. Gen. Stat.* §§ 4-177(a) and (b), and 4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as §§ 19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies.

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

In **PARAGRAPH 2** of the Statement of Charges, the Department alleges that respondent is, and for years has been, dependent on alcohol, drinks to excess, and is not in a recovery program.

Respondent denies this allegation. Tr. 03/07/2007, pp. 5-6.

In **PARAGRAPH 3** of the Statement of Charges the Department alleges that respondent's abuse of alcohol does, and/or may, impair her practice as a licensed practical nurse.

Respondent denies this allegation. Tr. 03/07/2007, p. 6.

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: . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . .

The Board concludes that the allegations in Paragraphs 2 and 3 of the Statement of Charges are proven by a preponderance of the evidence. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§ 20-99(b)(5) and 19a-17.

The Board concludes that respondent's denial that she has a drug or alcohol problem is not credible.

The Board provided respondent an opportunity to provide a psychiatric evaluation to determine her fitness to safely practice nursing. Although respondent met with a psychiatrist, a proper evaluation was not conducted. Respondent was offered a second opportunity to undergo a proper psychiatric evaluation but failed to do so.

The Board concludes that respondent has not presented sufficient evidence that she has engaged in meaningful substance abuse treatment and prevention and is at high risk for continued alcohol abuse that may affect her practice as a licensed practical nurse. The Board concludes that respondent is not able to practice nursing with reasonable skill and safety at this time.

Order

Pursuant to its authority under *Conn. Gen. Stat.* §§ 19a-17 and 20-99, the Board of Examiners for Nursing hereby orders the following:

That, respondent's licensed practical nurse license number 026732, is revoked effective the date this Memorandum of Decision is signed by the Board.

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

Dated at Hartford, Connecticut this 1st day of October 2008.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Buffel

CERTIFICATION

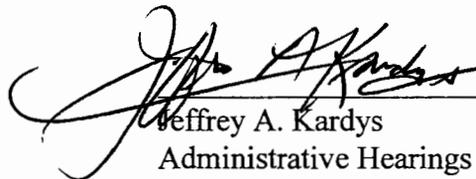
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 2nd day of October 2008, by certified mail, return receipt requested and first class mail, to:

Judy Smith
49 Allen Street, Apt. 3
Groton, CT 06340

Certified Mail RRR #91 7108 2133 3932 0551 0157

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
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