

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

Department of Public Health

Petition No. 2005-0404-011-008

vs.

Donna Lee DeLos Santos, LPN, Lic. No. 026781
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 May 19, 2005. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Donna Lee DeLos Santos (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 June 15, 2005, 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 June 15, 2005, scheduling a hearing for July 20, 2005. 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 on June 22, 2005. Dept. Exh. 1.

The hearing took place on July 20, 2005, in Room 1-B, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, July 20, 2005, p. 1.

Respondent submitted an oral Answer to the Statement of Charges. Transcript, July 20, 2005, pp. 6-11.

During the hearing respondent made an oral Motion to Lift the Summary Suspension Order. The Board denied the motion. Transcript, July 20, 2005, pp. 2-3, 39-40.

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 026781 on May 23, 1997. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 2-E.
2. Pursuant to a Prelicensure Consent Order dated April 21, 1997, the Department of Public Health ordered that respondent's licensed practical nurse license be issued on probation for a period of two years. Such disciplinary action was based upon respondent's November 18, 1991 felony conviction for possession of narcotics in violation of §21a-279(a) of the Connecticut General Statutes. Dept. Exh. 2-B.
3. At all relevant times, respondent was employed as a licensed practical nurse at Lawrence Memorial Hospital, New London, Connecticut. Transcript, July 20, 2005, pp. 6-7.
4. On March 8, 2005, while on duty, respondent acted in a manner consistent with impairment. Respondent was brought to the Occupational Health Unit to submit a urine sample. Respondent tested positive for 6-acetylmorphine, indicating heroin use within six hours of the test. Dept. Exh. 2-A4 (under seal).
5. On one occasion between November 2004 and March 2005, while working as a licensed practical nurse at Lawrence Memorial Hospital, respondent diverted Ritalin for her own personal use to relieve symptoms of heroine abuse. Respondent accomplished the diversion of Ritalin by falsely documenting on a controlled substance record that the Ritalin she signed out was administered to a patient. Transcript, July 20, 2005, pp. 20, 32.
6. From about November 2004 through about March 2005, respondent abused heroine and on one occasion, abused Ritalin. Respondent has a previous history of substance abuse which was followed by approximately twelve years of sobriety. Dept. Exh. 2-A36; Resp. Exh. A (under seal); Transcript, July 20, 2005, p. 10.
7. On three occasions from January 2005 to March 2005, respondent voluntarily admitted herself to the inpatient treatment facility at Silver Hill Hospital, New Canaan, Connecticut. Transcript, July 20, 2005, pp. 22-23.
8. Since on or about March 18, 2005, respondent has been under the care of Connecticut Behavioral Health Associates, and is being maintained on Suboxone to treat her narcotics addiction. Resp. Exh. A (under seal).

9. Since on or about May 2, 2005, respondent has regularly participated in Alcoholics Anonymous, Narcotics Anonymous, and has attended weekly supportive psychotherapy sessions at the Care Center, New London, Connecticut. Resp. Exh. A (under seal).

Conclusions of Law and Discussion

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

Donna Lee De Los Santos 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 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 *Conn. Gen. Stat.* § 4-182(c).

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

PARAGRAPH 3 of the Statement of Charges alleges that from about November 2004 through about March 2005, while working as a licensed practical nurse at Lawrence Memorial Hospital, respondent:

- a. Diverted Ritalin;
- b. Failed to completely, properly, and/or accurately document medical or hospital records; and/or,
- c. Falsified one or more Controlled Substance Receipt Records.

Respondent admits the allegations alleged in 3a, 3b and 3c but claims the conduct occurred on only one occasion. Transcript, July 20, 2005, pp. 7-9.

PARAGRAPH 4 of the Statement of Charges alleges that from about November 2004 through about March 2005, respondent abused or utilized to excess, Ritalin, morphine, codeine, and/or 6-acetylmorphine.

Respondent admits this allegation as to 6-acetylmorphine (heroin) and to Ritalin on one occasion, but denies this allegation as it pertains to morphine and codeine. Transcript, July 20, 2005, pp. 9-10.

PARAGRAPH 5 of the Statement of Charges alleges that respondent's abuse of Ritalin, morphine, codeine, and/or 6-acetylmorphine does, and/or may, affect her practice as a licensed practical nurse.

Respondent denies this allegation. Transcript, July 20, 2005, pp. 10-11.

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 carrying out usual nursing functions . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . .

Based on its findings and respondent's admissions, the Board concludes that respondent's conduct as alleged in Paragraphs 3a, 3b, and 3c is proven but that said conduct occurred on only one occasion. As to Paragraph 4, the Board concludes that respondent abused and excessively used 6-acetylmorphine and, on one occasion, Ritalin. The Department failed to present sufficient evidence to prove Paragraph 4 as it pertains to morphine and codeine.

As to Paragraph 5, the Board concludes that respondents' abuse of 6-acetylmorphine (heroin), if untreated, may affect her practice as a licensed practical nurse.

The Board further concludes that the above conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-99(b)(2), (5) and 19a-17.

Order

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

1. That the Summary Suspension of respondent's licensed practical nurse license, number 026781, ordered on June 15, 2005, is terminated on the effective date of this Memorandum of Decision.
2. That for Paragraphs 3, 4 and 5 of the Statement of Charges, respondent's licensed practical nurse license number 026781, is placed on probation for a period of four (4) years.
3. If any of the following 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. During the period of probation the Board shall pre-approve respondent's employment and/or change of employment within the nursing profession.
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. 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 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 first and fourth years of probation, and quarterly during the second and third years of probation.
- 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 or suspended, respondent and her employer shall notify the Board within seventy-two (72) hours of such termination or suspension.
- G. 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 P below.

- H. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist, approved by the Board and the Department, during the entire period of probation.
- I. 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.
- J. Respondent shall cause evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports shall be submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.
- K. The therapist reports cited in Paragraph J 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.
- L.
 - (1) At her expense, respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.
 - (2) Respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking. For any prescription of a controlled substance(s) for more than two consecutive weeks, the respondent shall cause the provider prescribing the controlled substance(s) to submit quarterly reports to the Board and the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:
 - 1. A list of controlled substances prescribed by this provider for the respondent;
 - 2. A list of controlled substance(s) prescribed by other providers;
 - 3. An evaluation of the respondent's need for the controlled substance;
 - 4. An assessment of the respondent's continued need for the controlled substance(s).

- (3) There must be at least one (1) such random alcohol/drug screen weekly during the first and fourth years of the probationary period; and, at least two (2) such random alcohol/drug screens monthly during the second and third years of the probationary period.
- (4) 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.

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

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

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

- M. 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.
- N. 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.
- O. The Board 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
Board of Examiners For Nursing
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

4. 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).
5. This Memorandum of Decision becomes effective, and the (4) year probation of licensed practical nurse license 026781 shall commence, on December 15, 2005.

The Board of Examiners for Nursing hereby informs respondent, Donna Lee DeLos Santos, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 7th day of December 2005.

BOARD OF EXAMINERS FOR NURSING

By Joan Dolibius CRNA, APRN

**STATE OF CONNECTICUT**

DEPARTMENT OF PUBLIC HEALTH

December 31, 2009

Donna Lee DeLos Santos, LPN
1191 Flanders Road
Mystic, CT 06355

Re: Memorandum of Decision
Petition No. 2005-0404-011-008
License No. 026781

Dear Ms. DeLos Santos:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective December 15, 2009.

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, RN, Nurse Consultant
Practitioner Licensing and Investigations Section

cc: J. Filippone
J. Wojick



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