

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Stormy Davis, LPN
License No. 027034

Petition No. 2008-0311-011-015

MEMORANDUM OF DECISION

Procedural Background

On November 24, 2008, the Department of Public Health (“the Department”) filed a Motion for Summary Suspension (“the Motion”) and a Statement of Charges (“the Charges”) with the Board of Examiners for Nursing (“the Board”). Dept. Exh. 1 and 2. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes (“the Statutes”) by Stormy Davis, Licensed Practical Nurse (“LPN”) (“respondent”), which would subject respondent’s LPN license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes.

Based on the allegations in the Charges and the affidavits and reports accompanying the Motion, the Board found that respondent’s continued nursing practice presented a clear and immediate danger to public health and safety and ordered, on January 21, 2009, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, that respondent’s LPN license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges (“the Order”). Dept. Exh. 1.

On January 22, 2009, the Charges, the Order, and a Notice of Hearing were sent to respondent by certified and first class mail. Dept. Exh. 2. A hearing was held on February 4, 2009 and May 20, 2009. During the hearing on February 4, 2009, respondent orally answered the Charges. Tr., 2/4/09, p. 11-15.

Respondent did not appear at the hearing on May 20, 2009, and was not represented by an attorney. Tr., 5/20/09, p. 2-3. The Department was represented by Staff Attorney Diane Wilan.

Following the close of the record on May 20, 2009, 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 of Waterbury, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut LPN license number 027034.
2. In paragraph two of the Charges, the Department alleges that at all relevant times, respondent was employed as an LPN at Rose Garden Health Center, Waterbury, Connecticut ("Rose Garden").
3. In paragraph three of the Charges, the Department alleges that during approximately January through February 2008, while working as an LPN at Rose Garden, respondent:
 - a. diverted Oxycodone and/or hydrocodone;
 - b. failed to completely, properly and/or accurately document medical or hospital records; and/or,
 - c. falsified one or more Controlled Substance Receipt Records.
4. In paragraph four of the Charges, the Department alleges that from approximately February 2006 through February 2008, respondent abused or utilized to excess Oxycodone, hydrocodone, and/or alcohol.
5. In paragraph five of the Charges, the Department alleges that on approximately June 17, 2008, June 19, 2008, and/or June 23, 2008, while being monitored by the Health Assistance InterVention Education Network program ("HAVEN"), respondent tested positive for Lorazepam, for which he did not have a prescription.
6. In paragraph six of the Charges, the Department alleges that respondent's abuse of Oxycodone, hydrocodone, Lorazepam and/or alcohol does, and/or may, affect his practice as an LPN.
7. In paragraph seven of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to § 20-99(b) of the Statutes, including but not limited to:
 - a. § 20-99(b)(2);
 - b. § 20-99(b)(5); and/or
 - c. § 20-99(b)(6).

Findings of Fact

1. Respondent of Waterbury, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut LPN license number 027034. Tr., 2/4/09, p. 11.
2. At all relevant times, respondent was employed as an LPN at Rose Garden. Tr., 2/4/09, p. 11.
3. During approximately January through February 2008, while working as an LPN at Rose Garden, respondent:
 - d. diverted Oxycodone and/or hydrocodone;
 - e. failed to completely, properly and/or accurately document medical or hospital records; and/or,
 - f. falsified one or more Controlled Substance Receipt Records.Tr., 2/4/09, p. 11-12.
4. On approximately June 17, 19, and/or 23, 2008, while being monitored by HAVEN, respondent tested positive for Lorazepam, for which he did not have a prescription. Tr., 2/4/09, p. 14, 17-18.
5. Respondent has a history of drug use, which progressed to alcohol abuse, that commenced during his service in Vietnam and continued until 1989. After suffering an injury that required surgery in approximately 2001, respondent relapsed and began using drugs. Respondent's relapse subsequently led to his diversion of Oxycodone and/or hydrocodone while working as a nurse at Rose Garden. Dept. Exh. 3 - A-6, B36-37; Tr., 2/4/09, p. 4-5, 22-23.
6. From approximately June 2007 through February 2008, respondent abused or utilized to excess Oxycodone and hydrocodone. Tr., 2/4/09, pp. 12-14.
7. Respondent diverted the controlled substances by forging the names of other nurses on controlled substance records. Dept. Exh. 3 - A-6.
8. Respondent did not consume alcohol from 1989 until one week prior to February 27, 2008, when he was confronted by agents from the State Department of Consumer Protection, Drug Control Division. Dept. Exh. 3 - A-6, B36-37, Tr., 2/4/09 p. 28.
9. Respondent has not practiced nursing since February 2008. Tr., 2/4/09, p. 18-19.

10. Respondent began treatment with HAVEN on or about March 18, 2008. On or about July 1, 2008, respondent was discharged from HAVEN for non-compliance. Dept. Exh. 4 (under seal).

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) 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; (6) fraud or material deception in the courts of professional services or activities

The Department sustained its burden of proof with regard to all of the allegations except the allegations contained in paragraph 4 of the Charges. As to paragraph 4 of the Charges, the Department failed to establish that respondent abused or utilized to excess Oxycodone, hydrocodone, and/or alcohol during the time period from February 2006 through February 2008. The Respondent admitted paragraphs 3a through 3c and paragraph 5 of the Statement of Charges. The evidence establishes and respondent admits that he abused or excessively used Oxycodone and hydrocodone only from approximately June 2007 through February 2008; and, that he abused alcohol once during the time period from approximately February 20 - 27, 2008. Tr., 2/4/09, p. 12-14, 28-29.

As to paragraph 7 of the charges, the Board requested that respondent provide current evidence relating to his substance abuse treatment. Because this evidence was not provided, respondent failed to rebut evidence establishing that his abuse of controlled substances and/or alcohol does, and/or may, affect his practice as a nurse.

The Board concludes that the allegations in the Charges are proven by a preponderance of the evidence, except as noted herein regarding paragraph 4. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(2), (5) and (6) and 19a-17 of the Statutes.

Order

Based on the record in this case, the above findings of facts and conclusions of law, the Board hereby orders, with respect to LPN license number 027034 held by Stormy Davis, as follows:

Respondent's license number 027034 to practice as a licensed practical nurse in the State of Connecticut is hereby revoked.

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

Dated at Hartford, Connecticut this 21st day of December, 2009.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bayliff

CERTIFICATION

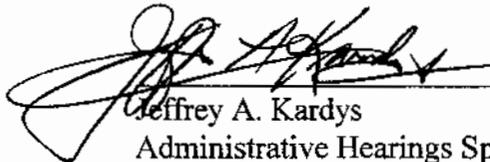
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 3rd day of December 2009, by certified mail, return receipt requested, and first class mail to:

Stormy Davis
51 Alpine Avenue
Waterbury, CT 06706

Certified Mail RRR #91-7108-2133-3931-8707-8386

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