

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

Department of Public Health

Petition No. 2005-0418-011-010

vs.

Colleen Spiett-Boyko, LPN, Lic. No. 027280

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 18, 2005. Dept. Exh. 1. The Statement of Charges alleges violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Colleen Spiett-Boyko (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 May 18, 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 May 18, 2005, scheduling a hearing for June 1, 2005. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against her. The Notice of Hearing and Statement of Charges were delivered by certified mail to respondent and respondent’s attorney. Dept. Exh. 1.

The hearing took place on June 1, 2005, June 15, 2005, July 20, 2005, September 21, 2005, and October 5, 2005, at the Department of Public Health, 410 Capitol Avenue, Hartford, Connecticut, and at the Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during all hearing dates and was represented by counsel. Respondent orally answered the Statement of Charges. Tr., June 1, 2005, p 8.

On October 5, 2005, following the conclusion of the hearing in this matter, the Board voted to vacate the Summary Suspension ordered on May 18, 2005.

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 is, and has been at all times referenced in the May 10, 2005 Statement of Charges, the holder of Connecticut licensed practical nurse license number 027280. Dept. Exh. 1.
2. At all relevant times, respondent was employed as a licensed practical nurse at Plainville Health Care, Plainville, Connecticut.
3. The evidence is insufficient to prove that during January and February 2005, while working as a licensed practical nurse at Plainville Health Care, respondent diverted hydromorphone, hydrocodone/APAP, Alprazolam, APAP/codeine, and or oxycodone/APAP.
4. During January and February 2005, while working as a licensed practical nurse at Plainville Health Care, respondent failed to completely, properly, and/or accurately document medical records. Tr., 6/1/2005, pp. 117-125.
5. The evidence is insufficient to prove that during January and February 2005, while working as a licensed practical nurse at Plainville Health Care, respondent falsified one or more controlled substance receipt records.
6. The evidence is insufficient to prove that during 2005, respondent abused or utilized to excess, hydromorphone, hydrocodone/APAP, Alprazolam, APA/codeine, or oxycodone/APAP.
7. Since the evidence is insufficient to prove that respondent abused hydromorphone, hydrocodone/APAP, Alprazolam, APA/codeine, or oxycodone/APAP, there are no grounds to support the charge that drug abuse does, and/or may affect respondent's practice as a licensed practical nurse.

Conclusions of Law and Discussion

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

Colleen Spiett-Boyko 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)*.

PARAGRAPH 3 of the Statement of Charges alleges that during January and February 2005, while working as a licensed practical nurse at Plainville Health Care respondent:

- a. diverted hydromorphone, hydrocodone/APAP, Alprazolam, APAP/codeine, and or oxycodone/APAP;
- b. failed to completely, properly and/or accurately document medical records; and/or,
- c. falsified one or more controlled substance receipt records;

PARAGRAPH 4 of the Statement of Charges alleges that during 2005, respondent abused or utilized to excess, hydromorphone, hydrocodone/APAP, Alprazolam, APA/codeine, oxycodone/APAP.

PARAGRAPH 5 of the Statement of Charges alleges that respondent's abuse of hydromorphone, hydrocodone/APAP, Alprazolam, APAP/codeine, oxycodone/APAP does, and/or may, affect her practice as a licensed practical nurse.

Respondent admits the allegations alleged in paragraph 3b, in that she failed to properly chart the administration of prescribed medications to her patients. Tr. 6/1/2005, pp. 117-125.

Respondent denies the allegations in paragraphs 3a, 3c, 4 and 5. The Board concludes that the Department failed to present sufficient evidence to prove the allegations in Paragraphs 3a, 3c, 4, and 5. Therefore, those allegations are dismissed. Nevertheless, based on the evidence presented the Board finds that respondent is under a physician's care for chronic pain which includes on-going treatment with narcotics, and that use of prescribed medications for pain control, if not properly controlled, may affect respondent's ability to practice as a licensed practical nurse with reasonable skill and safety.

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, the Board concludes that respondent's conduct as alleged in Paragraph 3b of the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-99(b)(2), 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 for Paragraph 3b of the Statement of Charges, respondent's licensed practical nurse license, number 027280 is placed on probation for a period of two (2) years.
 - A. During the period of probation the Board shall pre-approve respondent's employment and/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. During the first three months of the probationary period, respondent shall complete forty (40) hours of one-on-one supervised medication administration. Certification of successful completion of the supervised medication administration shall be submitted to the Board at the address cited in Paragraph M below.
 - 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 year of probation and quarterly for the second year 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 M below.

- F. Should respondent's employment as a nurse be involuntarily terminated or suspended, respondent and his 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 M below.
- H. Respondent shall submit quarterly reports from her treating physician confirming her compliance with her treatment plan for chronic pain.
- I.
 - (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 urine screen monthly during the entire 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)

In addition to the above, the random urine screens must include testing for those drugs prescribed to respondent by her treating physician for the treatment of respondent's chronic pain.

- (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 M below, by respondent's therapist, personal physician or the testing laboratory.
- J. 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.
- K. 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.
- L. The Board must be informed in writing prior to any change of address.

M. 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

3. 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).
4. This Memorandum of Decision becomes effective, and the two year probation of licensed practical nurse license 027280 shall commence, on April 15, 2006.

The Board of Examiners for Nursing hereby informs respondent, Colleen Spiett-Boyko, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Newington, Connecticut this 5th day of April 2006.

BOARD OF EXAMINERS FOR NURSING

By 