

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Ethlyn Cherrington, L.P.N.
License No. 027288

Petition No. 2007-1204-011-040

MEMORANDUM OF DECISION

Procedural Background

On September 4, 2009, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") with the Board of Examiners for Nursing ("the Board"). Bd. Exh. 1. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("the Statutes") by Ethlyn Cherrington, L.P.N. ("respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to §§ 19a-17 and 20-99(b) of the Statutes.

On September 16, 2009, the Charges and a Notice of Hearing were sent to respondent by certified and first class mail. Bd. Exh. 2. On September 30, 2009, respondent filed a written Answer to the allegations. Bd. Exh. 3. After one continuance, the hearing was held on February 3, 2010. At the hearing, respondent was represented by Attorney Daniel F. Schopick; the Department was represented by Attorney Ellen Shanley. Following the close of the record on February 3, 2010, 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 Ethlyn Cherrington of Bridgeport is, and has been at all times referenced in this Charges, the holder of Connecticut licensed practical nurse license number 027288.
2. In paragraph two of the Charges, the Department alleges that at all relevant times, respondent was employed at St. Joseph's Manor Rehabilitation and Nursing Center, in Trumbull, Connecticut as a licensed practical nurse.
3. In paragraph three of the Charges, the Department alleges that on or about July 11, 2007, resident D.B., an alert, oriented resident, refused to take milk of magnesia. The resident also told respondent that she did not want to have a rectal suppository administered to her.

4. In paragraph four of the Charges, the Department alleges that respondent restrained D.B. and administered the rectal suppository, against the resident's will.
5. In paragraph five of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the Statutes, §20-99(b), including but not limited to §20-99(b)(2).

Findings of Fact

1. Respondent of Bridgeport is, and has been at all times referenced in this Charges, the holder of Connecticut licensed practical nurse license number 027288. Bd. Exh. 3.
2. At all relevant times, respondent was employed at St. Joseph's Manor Rehabilitation and Nursing Center in Trumbull, Connecticut. Bd. Exh. 3.
3. On or about July 11, 2007, resident D.B., an alert, oriented resident, refused to take milk of magnesia. The resident also told respondent that she did not want to have a rectal suppository administered to her.
4. Respondent restrained D.B. and administered the rectal suppository, against the resident's will.

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). The Department sustained its burden of proof with regard to the allegations contained in the Charges.

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: (1) Fraud or material deception in procuring or attempting to procure a license to practice nursing; (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions;

The Department sustained its burden of proof concerning the allegation in paragraph 2 of the Charges, that at all relevant times respondent was employed at St. Joseph's Manor Rehabilitation and Nursing Center in Trumbull, Connecticut as a licensed practical nurse. Respondent admits this charge.

The Department sustained its burden of proof concerning the allegation in paragraph 3 of the Charges that on or about July 11, 2007, resident D.B., an alert, oriented resident, refused to take milk of magnesia. The resident also told respondent that she did not want to have a rectal suppository administered to her.

The Department sustained its burden of proof with regard to the allegation in paragraph 4 of the Charges that respondent restrained D.B. and administered the rectal suppository, against the resident's will. Respondent admits that she administered a rectal suppository and denies that she restrained the patient or administered the suppository against the patient's will. Instead, respondent claims that she merely held the resident while administering the suppository. The preponderance of the evidence establishes that respondent restrained the resident as illustrated by the resident's consistent complaints to that effect. D.B. was fully competent and able to communicate her needs clearly. Therefore, the Department sustained its burden of proof.

The Board concludes that respondent's conduct as alleged in the Charges are proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(2) and 19a-17 of the Statutes.

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, with respect to license number 027288 held by Ethlyn Cherrington, L.P.N., as follows:

1. Respondent shall pay a civil penalty of five hundred dollars (\$500) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision.
2. Respondent's license shall be placed on probation for a period of six months under the following terms and conditions. If any of the 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. 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. 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 entire of probation.
- D. The employer reports cited in Paragraph C 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 I below.
- E. 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.
- F. Respondent shall successfully complete a course in professional ethics, including patients' rights, pre-approved by the Board. Within thirty days of completion of the course, respondent shall provide proof to the satisfaction of the Board and Department of her successful completion of the course.
- G. During ~~the first year of~~ the probationary period respondent, at her expense, shall successfully complete a course in medication administration and documentation pre-approved by the Board. Respondent shall provide proof to the satisfaction of the Board of her successful completion of the course within thirty days of completion.
- H. The Board must be informed in writing prior to any change of address.

- I. All communications, payments if required, 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 six month probation of licensed practical nurse license no. 027288 shall commence, on June 1, 2010.

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

Dated at Hartford, Connecticut this 19th day of May, 2010.

BOARD OF EXAMINERS FOR NURSING

By Patricia Bouffard
Patricia Bouffard, RN
Chairperson

CERTIFICATION

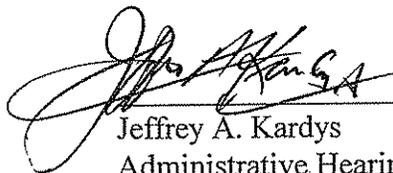
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 20th day of May 2010, by certified mail, return receipt requested to:

Daniel F. Schopick, Esq
Steiber and Schopick
572 White Plains Road
Trumbull, CT 06611

Certified Mail RRR #91-7108-2133-3932-0555-2447

and by E-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



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

December 2, 2010

Ethlyn Cherrington, LPN
121 Higgins Avenue
Bridgeport, CT 06606

Re: Memorandum of Decision
Petition No. 2007-1204-011-040
License No. 027288

Dear Ms. Cherrington:

Please accept this letter as notice that you have satisfied the terms of your license probation, effective December 1, 2010.

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.

Very truly yours,

Bonnie Pinkerton, RN, Nurse Consultant
Practitioner Licensing and Investigations Section

cc: J. Filippone
J. Wojick



Phone: (860) 509-7400
Telephone Device for the Deaf (860) 509-7191
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