

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

Department of Public Health

Petition No. 2001-0515-011-015

vs.

Kenneth Levy II, LPN Lic. No. 027483  
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 23, 2001. Dept. Exh. 1. The Statement of Charges alleges violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Kenneth Levy II (hereinafter "respondent") which would subject respondent's licensed practical nurse license to disciplinary action pursuant to the General Statutes of Connecticut.

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 6, 2001, 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 6, 2001, scheduling a hearing for June 20, 2001. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. Board Exhibit 1 indicates that the Summary Suspension Order, Notice of Hearing and Statement of Charges were served on respondent by State Marshal on June 12, 2001. Transcript, June 20, 2001, p.3.

The hearing took place on June 20, 2001, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing but was not represented by counsel. Transcript, June 20, 2001, p. 2.

Respondent submitted an oral Answer to the Statement of Charges. Respondent admitted to all of the paragraphs and subparagraphs in the Statement of Charges. Transcript, June 20, 2001, pp. 8-12.

During the hearing the Department orally amended the Statement of Charges by changing “peach’ to peace in paragraph 2A.

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 027483 on May 7, 1999. Respondent was the holder of said license at all times referenced in the Statement of Charges. Dept. Exh. 1-2; Dept. Exh. 1-3; Transcript, June 20, 2001, pp.8-9.
2. On May 4, 1999, respondent entered into a prelicensure Consent Order (hereinafter, the “Consent Order”) with the Department in petition number 991111-011-016 that placed respondent’s practical nurse license on probation for a period of four years. Such disciplinary action was based upon respondent’s past history in 1989 and 1997 of being found guilty of multiple criminal charges and because of his admitted drug use between 1996 and 1997. Dept. Exh. 1B; Transcript June 20, 2001, p. 9.
3. The Consent Order specifically provided that respondent was :
  - a. required to notify the Department within fifteen days of any change in his employment status;
  - b. prohibited from accepting employment for a personnel provider;
  - c. required to provide any employer with a copy of the Consent Order within fifteen days of the commencement of employment;
  - d. required to provide quarterly employer reports; and ,
  - e. required to submit to random urine screens.Dept. Exh. 1B; Transcript June 20, 2001, p. 10.
4. On November 3, 2000, respondent was terminated from Windsor Rehabilitation and Healthcare Center in Windsor, CT. for failure to sign Medication Administration Records (MAR) and for nine medication errors. Dept. Exh. 1H; Transcript June 20, 2001, p. 10-11.
5. On December 20, 2000, respondent notified the Department that he had left Windsor Rehabilitation and Healthcare Center in Windsor, CT. Dept. Exh. 1; Transcript June 20, 2001, p. 11.
6. On November 7, 2000, respondent accepted employment with New England Temporary Health Services, a personnel provider. In January 2001, respondent accepted additional employment with Caring Nurses, also a personnel provider. Dept. Exh. 1; Transcript June 20, 2001, p. 36.

7. Respondent did not provide a copy of Consent Order to New England Temporary Health Services until late December 2000. At no time did respondent provide Caring Nurses with a copy of the Consent Order. Dept. Exh. 1-1, 1A; Transcript June 20, 2001, pp. 11-12.
8. On or about May 3, 2001, approximately six months after the commencement of employment at New England Temporary Health Care, respondent notified the Department of his employment with New England Temporary Health Care. At no time did respondent notify the Department of his employment with Caring Nurses. Dept. Exh. 1-1; Transcript June 20, 2001, pp. 11.
9. On or about May 7, 2001, the Department received the first employer report from New England Temporary Health Care. This report was received six months after respondent commenced employment. The Department received no employer reports from Caring Nursing. Dept. Exh. 1A; Transcript, June 20, 2001, p. 12.
10. Since November 3, 2000, respondent submitted to twenty-five urine screens for drugs and alcohol. Despite notification from the Department that urine screens must be random, twenty of the twenty-five urine screens were conducted on Fridays. Dept. Exh. 1A; Transcript, June 20, 2001, p. 12.

### *Conclusions of Law and Discussion*

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

Kenneth Levy II 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 his 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 2** of the Statement of Charges alleges that on May 4, 1999, respondent entered into a prelicensure Consent Order in petition number 9911111-011-016 that placed respondent's licensed practical nurse license on probation for period of four years based on proof that;

- a. between 1989 and 1997, respondent was found guilty of multiple criminal charges.
- b. between 1996 and 1997, respondent abused or excessively used drugs.

Respondent admits this charge. Transcript June 20, 2001, p. 9.

**PARAGRAPH 3** of the Statement of Charges alleges that the precicensure Consent Order specifically provided that respondent was:

- a. required to notify the Department within fifteen days of any change in his employment status;
- b. prohibited from accepting employment for a personnel provider;
- c. required to provide any employer with a copy of the Consent Order within fifteen days of the commencement of employment;
- d. required to provide quarterly employer reports; and ,
- e. required submitting to random urine screens.

Respondent admits this charge. Transcript June 20, 2001, pp. 9-10.

**PARAGRAPH 4** of the Statement of Charges alleges on or about May 17, 1999, respondent was employed at Windsor Rehabilitation and Healthcare Center, Windsor, Connecticut as a nurse. On or about November 3, 2000, respondent was terminated for failure to meet standards for a proper medication pass and to accurately document medications in the medical record.

Respondent admits this charge. Transcript June 20, 2001, pp. 10-11.

**PARAGRAPH 5** of the Statement of Charges alleges on or about December 20, 2000, respondent notified the Department that he had left Windsor Rehabilitation and Healthcare Center and was seeking new employment.

Respondent admits this charge. Transcript June 20, 2001, p. 11.

**PARAGRAPH 6** of the Statement of Charges alleges on or about November 7, 2000, respondent accepted employment with New England Temporary Health Services, a personnel provider and in November or December 2000, respondent also accepted employment with Caring Nurses, a personnel provider.

Respondent admits he began employment with New England Temporary Health Services in November 2000 but did not begin employment with Caring Nurses until January 2001. Transcript June 20, 2001, pp. 11, 36.

**PARAGRAPH 7** of the Statement of Charges alleges in late December 2000 or early January 2001, respondent provided New England Temporary Health Care with a copy of the precicensure Consent Order but at no time did respondent provide Caring Nurses with a copy of the Consent Order.

Respondent admits this charge. Transcript June 20, 2001, pp. 11-12.

**PARAGRAPH 8** of the Statement of Charges alleges on or about May 3, 2001, approximately six months after the commencement of employment with New England Temporary Health Care, respondent notified the Department of his employment with New England Temporary Health Care but at no time did respondent notify the Department of his employment with Caring Nurses.

Respondent admits this charge. Transcript June 20, 2001, p. 12.

**PARAGRAPH 9** of the Statement of Charges alleges on or about May 7, 2001, the Department received an employer report from New England Temporary Health Care. At no time did the Department receive an employer report from Caring Nurses.

Respondent admits this charge. Transcript June 20, 2001, p. 12.

**PARAGRAPH 10** of the Statement of Charges alleges that since November 3, 2000, twenty of twenty-five urine screens were conducted on Fridays despite several notices to respondent from the Department that such conduct was a violation of the Consent Order.

Respondent admits this charge. Transcript June 20, 2001, p. 12.

**PARAGRAPH 11** of the Statement of Charges alleges that respondent's as alleged in paragraphs 2 through 10, constitutes violations of the terms of probation as set forth in the precicensure Consent Order.

Based on its findings, the Board concludes that respondent's conduct as alleged in the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes violates the terms of probation as set forth in the precicensure Consent Order dated May 4, 1999. Therefore, respondent's licensed practical nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat. §19a-17*.

The Board finds that respondent violated the terms of probation of his licensed practical nurse license despite being advised by the Department of Public Health of his non-compliance. The Board finds the testimony of witness Bonnie Pinkerton to be credible. The Board does not consider respondent's testimony explaining the reasons for his non-compliance with the terms of probation to be credible.

***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 for the Statement of Charges dated May 23, 2001, respondent's licensed practical nurse license, number 027483, is revoked effective the date this Memorandum of Decision is signed by the Board of Examiners for Nursing.

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

Dated at Hartford, Connecticut this 3rd day of October 2001.

BOARD OF EXAMINERS FOR NURSING

By 