

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

Department of Public Health

Petition No. 2002-0513-011-018

vs.

Kevin Ouellette, LPN, Lic. No.027701
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 dated July 26, 2002. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Kevin Ouellette (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).

The Board issued a Notice of Hearing dated August 1, 2002, scheduling a hearing for November 20, 2002. Dept. Exh. 1.

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

The hearing took place on November 20, 2002, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was not present during the hearing and was not represented by counsel. Tr. pp. 3-4.

Respondent did not submit an Answer to the Statement of Charges. On October 31, 2002, the Department filed a Motion to Deem Allegations Admitted; the Motion was granted by the Board at the hearing on November 20, 2002. Tr. p. 4.

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 record, the Board makes the following Findings of Fact:

1. At all times referenced in the Statement of Charges, respondent was the holder of Connecticut licensed practical nurse license number 027701. Tr. p. 4.

2. On October 3, 2001, the Board ordered a Consent Order in Petition Number 2001-0425-011-013 ("the 2001 Order") that placed respondent's licensed practical nurse license on probation for a period of four years. Such disciplinary action was based upon respondent's alleged diversions of Ultram. Tr. p. 4.
3. The 2001 Order specifically provided that respondent shall not obtain or use controlled substances, legend drugs or alcohol in any form unless prescribed or recommended for a legitimate therapeutic purpose by a licensed healthcare professional authorized to prescribe medications; that he shall submit to random observed urine screens for drugs and alcohol at least once per week for the first two years and at least once every two weeks for the remainder of the probationary period; and, that all screens shall be negative for the presence of drugs and alcohol. The 2001 Order further provided that respondent shall engage in therapy and counseling for the entire probationary period; and, that he shall be responsible for the provision of monthly written reports from his therapist for the duration of the probationary period. Tr. p. 4.
4. Respondent tested positive for morphine on about December 26, 2001 and May 1, 2002. Tr. p. 4.
5. From November 1, 2001 to May 10, 2002, respondent frequently failed to submit to random observed screens when he was called by his screening monitor. Tr. p. 4.
6. On May 13, 2002, respondent advised the Department that he could not afford the time and money to comply with the 2001 Order. Tr. p. 4.
7. Since on or about January 18, 2002, respondent has failed to provide therapist reports. Tr. p. 4.

Conclusions of Law and Discussion

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

Kevin Ouellette 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.

Respondent did not submit an Answer to the Statement of Charges. Pursuant to § 19a-9-20 of the Regulations of Connecticut State Agencies the Board deems the allegations in the Statement of Charges to be admitted.

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 . . . (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 Paragraphs 1-7 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)(5) and 19a-17, and that said conduct violates the terms of probation as set forth in the Consent Order dated October 3, 2001. Therefore, respondent's licensed practical nurse license is subject to disciplinary action pursuant to *Conn. Gen. Stat.* § 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:

Respondent's licensed practical nurse license number 027701 is revoked effective the date this Memorandum of Decision is signed by the Board.

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

Dated at Newington, Connecticut this 21st day of May 2003.

BOARD OF EXAMINERS FOR NURSING

By 