

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Vincent Eugenio, LPN
Lic. No. 028881

Petition No. 2008-0709-011-037

MEMORANDUM OF DECISION

Procedural Background

On August 20, 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. 2. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("the Statutes") by Vincent Eugenio, LPN ("respondent") which would subject respondent's licensed practical nurse ("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 August 20, 2008, 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. 2.

On August 20, 2008, the Charges, the Order and a Notice of Hearing were mailed to respondent by certified mail, return receipt requested, and by first class mail. Dept. Exh. 1.

The hearing was held on September 3, 2008. The respondent did not appear at the hearing. Attorney Diane Wilan represented the Department. Tr., p. 2.

Respondent did not file an Answer to the Charges. During the hearing on September 3, 2008, the Board granted the Department's oral motion to deem the allegations admitted. Tr., p. 7.

On October 1, 2008, 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 Vincent Eugenio of South Hadley, Massachusetts is, and has been at all times referenced in the Charges, the holder of Connecticut LPN license number 028881.
2. In paragraph two of the Charges, the Department alleges that on November 21, 2007, the Board issued a Memorandum of Decision in Petition Number 2006-0925-011-033 that placed respondent's LPN license on probation for a period of four years. Such disciplinary action was based upon respondent's admitted abuse of cocaine.
3. In paragraph three of the Charges, the Department alleges that said Memorandum of Decision specifically provided that respondent must submit to random, observed urine screens for drugs and alcohol once every week during the first year of his license probation.
4. In paragraph four of the Charges, the Department alleges that since the start of his probation on December 1, 2007, respondent has been screened only twice, on or about February 13, 2008 and February 27, 2008.
5. In paragraph five of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Memorandum of Decision, and subjects respondent's license to revocation or other disciplinary action authorized by the §§19a-17 and 20-99(b) of the Statutes.

Findings of Fact

1. Vincent Eugenio of South Hadley, Massachusetts is, and has been at all times referenced in the Charges, the holder of Connecticut LPN license number 028881. Dept. Ex. 3c
2. On November 21, 2007, the Board issued a Memorandum of Decision in Petition Number 2006-0925-011-033 that placed respondent's LPN license on probation for a period of four years. Dept. Ex. 3, at a.2.
3. The memorandum of decision required the respondent to submit to random, observed urine screens for drugs and alcohol once every week during the first year of his license probation. Dept. Ex. 3, at a.1., a.14.
4. Since the start of his probation on December 1, 2007, respondent has been screened only twice, on or about February 13, 2008 and February 27, 2008. Dept. Ex. 3, at a.1., a.14.

Discussion and Conclusions of Law

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

Respondent held a LPN license in the State of Connecticut at all times referenced in the 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 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*, Superior Court, Judicial District of Hartford/New Britain at Hartford, Docket No. 705601 (October 10, 1995, Hodgson, J.); *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981).

Respondent did not file an Answer to the Charges and did not appear at the hearing. Pursuant to § 19a-8-20 of the Regulations of Connecticut State Agencies, the Board deems the allegations in paragraphs one through five of the Charges to be admitted.

General Statutes § 20-99 (a) gives the Board 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.” That subsection further provides that “[a]fter 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. . . .” Subsection (b) of § 20-99 of the Statutes sets forth eight specific acts or omissions that constitute “conduct which fails to conform to the accepted standards of the nursing profession. “ General Statutes 20-99 (b) “declares that those specific acts or omissions shall constitute such conduct but that such conduct *is not limited* to the acts or omissions specified.” (Emphasis added.) *Leib v. Board for Nursing*, 177 Conn 78, 88 (1979). As found by the Supreme Court, under General Statutes § 20-99 (b) “‘unprofessional conduct’ is ‘conduct which violates those standards of the professional behavior which through professional experience have become established, by the consensus of the expert opinion of the members, as reasonably necessary for the protection of the public interest. This comports with the view that what constitutes ‘unprofessional conduct’ must be determined ‘by those standards which are commonly accepted by those practicing the same profession in the same territory.’” *Id.*, 88-89.

In the present matter, the Board’s memorandum of decision required that the respondent submit to random, observed urine screens for drugs and alcohol once every week during the first year of the respondent’s probation. Since the start of the respondent’s probation on December 1, 2007, respondent has been tested only twice, on or about February 13, 2008 and February 27, 2008. The respondent’s conduct constitutes a violation of the terms of his probation. The Board

finds that the respondent's failure to adhere the terms of his probation in submitting to the required weekly urine screen constitutes unprofessional conduct in violation of Conn. Gen. Stat. §20-99 (b). The Board further finds that such conduct violates the standards of the profession and places the public at risk. The Board concludes that the respondent's conduct constitutes grounds for disciplinary action pursuant to §§ 20-99 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 the LPN license number 028881 held by Vincent Eugenio as follows:

Respondent's license number 028881 to practice as a licensed practical nurse in the State of Connecticut is hereby revoked effective the date this Memorandum of Decision is signed by the Board.

Dated at Manchester, Connecticut this 20th day of May 2009.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Buford

CERTIFICATION

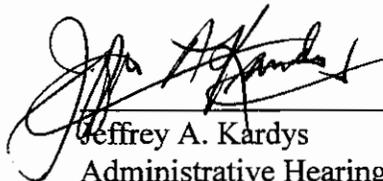
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 21st day of May 2009, by certified mail, return receipt requested, and first class mail to:

Vincent Eugenio
14424 Duckridge Court
Mid Lothian, VA 23112

Certified Mail RRR #91-7108-2133-3932-0551-0409

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
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