

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
BOARD OF EXAMINERS FOR NURSING**

Cheryl Dubovik, LPN  
License No. 030550

Petition No. 2010-5153

**MEMORANDUM OF DECISION**

*Procedural Background*

On July 9, 2010, 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"). Board. Exh. 1. The Charges allege violations of Chapter 378 of the General Statutes ("the Statutes") by Cheryl Dubovik ("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 attached to 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 July 21, 2010, 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"). Board Exh. 1.

On July 26, 2010, the Charges, the Order, and a Notice of Hearing were delivered to respondent's address of record by State Marshal. Board Exh. 1; Dept. Exh. 1. The hearing was held on August 18, 2010. Respondent was neither present nor represented at the hearing. Tr. p. 2. Attorney Linda Fazzina represented the Department. Tr. p. 1.

Respondent did not file an Answer to the Charges. Tr. p. 4. During the hearing, the Board granted the Department's Motion to Deem the Allegations Admitted. Tr. pp. 4-5. Following the close of the record on August 18, 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*

#### *First Count*

1. In paragraphs one and five of the Charges, the Department alleges that respondent is, and has been at all times referenced in this Statement of Charges, the holder of Connecticut licensed practical nurse license number 030550.
2. In paragraph two of the Charges, the Department alleges that on or about May 27, 2010, respondent abused or utilized to excess codeine.
3. In paragraph three of the Charges, the Department alleges that respondent's abuse of codeine does, and/or may, affect her practice as a licensed practical nurse.
4. In paragraph four of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to § 20-99 of the Statutes, including but not limited to § 20-99(b)(5).

#### *Second Count*

5. In paragraph six of the Charges, the Department alleges that on or about November 18, 2009, the Board ordered a Consent Order ("the Order") placing respondent's licensed practical nurse license on probation for a period of four (4) years based upon respondent's admitted diversions of Tramadol and Oxycodone from patient stock for personal use.
6. In paragraph seven of the Charges the Department alleges that the 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 health care professional authorized to prescribe medications.
7. In paragraph eight of the Charges the Department alleges that the Order also provide that respondent submit to observed random urine screens for drugs and alcohol; that respondent be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking; and, that all screens be negative for the presence of drugs and alcohol.
8. In paragraph nine of the Charges, the Department alleges that on or about May 27, 2010, respondent tested positive for codeine.
9. In paragraph ten of the Charges, the Department alleges that on or about June 23, 2010, the Department received a copy of a prescription for respondent, dated June 17, 2010, for APAP/Codeine 300 – 30 mg tablets.

10. In paragraph eleven of the Charges, the Department alleges that on or about June 23, 2010, respondent informed the Department that:
  - a) She did not have a prescription for codeine at the time she tested positive;
  - b) On or about May 27, 2010, she had a migraine and her husband gave her a tablet of Tylenol #3; and/or
  - c) She was not sure where her husband got the Tylenol #3, as he did not have a prescription.
  
11. In paragraph twelve 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 Order, and subjects respondent's license to revocation or other disciplinary action authorized by §§ 19a-17 and 20-99(b) of the Statutes.

### *Findings of Fact*

1. The Department provided respondent with reasonable and adequate written notice of the allegations contained in the Statement of Charges. Board Exh. 1., Tr. p. 4.
2. Respondent did not file an Answer. Tr. p. 4.
3. The factual allegations contained in the First and Second Counts are deemed admitted and true. Tr. pp. 4-5.

### *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).

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: (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions; . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; . . .

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 § 4-182(c) of the Statutes. 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 deemed the allegations in the Charges to be admitted.

The Board concludes that respondent's conduct as alleged in the First and Second Counts of the Charges and deemed to be admitted and true, constitutes grounds for disciplinary action pursuant to §§ 20-99(b) 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 that respondent's license number 030550 to practice as a licensed practical nurse in the State of Connecticut is hereby **REVOKED**.

The Board of Examiners for Nursing hereby informs respondent, Cheryl Dubovik, and the Department of Public Health of the State of Connecticut of this decision, which becomes effective on the date signed by the Board of Examiners for Nursing.

Dated at Hartford, Connecticut this 9th day of March 2011.

BOARD OF EXAMINERS FOR NURSING

By Patricia C Bouffard  
Patricia Bouffard, R.N.

**CERTIFICATION**

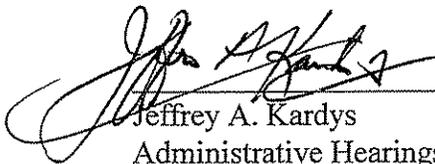
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 10<sup>th</sup> day of March 2011, by certified mail, return receipt requested and first class mail to:

Cheryl Dubovik  
465 Platt Avenue  
West Haven, CT 06516

**Certified Mail RRR #91-7108-2133-3932-0556-3443**

and via email to:

Matthew Antonetti, Principal Attorney  
Legal Office  
Department of Public Health  
410 Capitol Avenue, MS #12LEG  
Hartford, CT 06134-0308



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Jeffrey A. Kardys  
Administrative Hearings Specialist/Board Liaison  
Department of Public Health  
Public Health Hearing Office