

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

Lisa Breton, LPN
License No. 032176

Petition No. 2009-20091414

MEMORANDUM OF DECISION

Procedural Background

On March 3, 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"). Bd. Exh. 1. The Charges allege violations of certain provisions of Chapter 378 of the General Statutes ("the Statutes") by Lisa Breton ("respondent") which would subject respondent's licensed practical nurse 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 March 3, 2010, pursuant to §§ 4-182(c) and 19a-17(c) of the Statutes, that respondent's licensed practical nurse license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges ("the Order"). Bd. Exh. 1.

On March 3, 2010, the Charges, the Order, and a Notice of Hearing were sent to respondent by certified and first class mail. Bd. Exh. 1. On March 8, 2010 they were served upon respondent by State Marshal. Bd. Ex. 2.

The hearing was held on March 17, 2010, April 20, 2011 and October 19, 2011. On the first day of hearing, respondent was present and was not represented by an attorney. On the second and third days of hearing, respondent was present and was represented by Attorney William Stevens. Tr. 4/20/11, p. 2; Tr. 10/19/11, p. 2. Attorney Diane Wilan represented the Department on all three days of hearing.

On March 17, 2010, respondent orally answered the Charges on the record of the hearing and requested a continuance. The Board granted the continuance, with certain conditions, until September 15, 2010. In the interim, respondent agreed to comply with such conditions and be prepared to submit specific documentation to confirm such compliance to the Board on the next day of hearing. Tr. 3/17/10, pp., 33-37.

After a number of continuances, the next day of hearing was held on April 20, 2011. During that hearing, respondent requested another continuance in order to pursue substance abuse treatment and counseling. Over the Department's objection, the Board granted respondent another six-month continuance with certain stipulations: respondent agreed to submit to the Board documentation no later than May 20, 2011 that confirmed that she was engaged in therapy and counseling with a licensed or certified therapist. Respondent also agreed that if she failed to provide such documentation, the six-month continuance would be voided and the next day of hearing would be held on June 15, 2011. Bd. Exh. 3; Tr. 4/20/11, pp. 12-15.

On May 18, 2011, respondent submitted the documentation requested. Dept. Exh. 2 (under seal).

On October 19, 2011, the last day of hearing was held. Respondent again requested another continuance to pursue treatment since she claimed that many of the providers she had contacted would not accept her insurance. The Department objected to such a request because of the amount of time respondent had already been granted to pursue such treatment. Tr. 10/19/11, pp. 10-12. After hearing respondent's alternative request for a continuance with a requirement of her strict adherence to certain conditions, the Board denied her request and proceeded with the hearing. Tr. 10/19/11, pp. 13-14.

Following the close of the record on October 19, 2011, 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 respondent of Waterbury is, and has been at all times referenced in the Charges, the holder of licensed practical nurse ("LPN") license number 032176.
2. In paragraph two of the Charges, the Department alleges that at all relevant times, respondent was employed as a licensed practical nurse at Shady Knoll Health Care ("the facility") in Seymour, Connecticut.
3. In paragraph three of the Charges, the Department alleges that from approximately August 2009 through November 2009, while working as a LPN at the facility, respondent:
 - a. diverted Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone);

- b. failed to completely, properly and/or accurately document medical or hospital records; and/or
 - c. falsified one or more Controlled Substance Receipt Records.
4. In paragraph four of the Charges, the Department alleges that from approximately August 2009 through November 2009, respondent abused or utilized to excess Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone).
5. In paragraph five of the Charges, the Department alleges that respondent's abuse of Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone) does, and/or may, affect her practice as a LPN.
6. In paragraph six of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §20-99(b) of the Statutes, including, but not limited to:
 - a. §20-99(b)(2);
 - b. §20-99(b)(5); and/or
 - c. §20-99(b)(6).

Findings of Fact

1. Respondent of Waterbury is, and has been at all times referenced in the Charges, the holder of LPN license number 032176. Tr. 3/17/10, p. 5.
2. At all relevant times, respondent was employed as a LPN at the facility in Seymour, Connecticut. Tr. 3/17/10, p. 5.
3. From approximately August 2009 through November 2009, while working as a LPN at the facility, respondent:
 - a. diverted Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone) two to three times per week;
 - b. failed to completely, properly and/or accurately document medical or hospital records; and/or
 - c. falsified one or more Controlled Substance Receipt Records.Tr. 3/17/10, p. 6; Dept. Exh. 1, pp. B-4 through B-12, B-14 through B-16.
4. From approximately August 2009 through November 2009, respondent abused or utilized Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone) to excess. Tr. 3/17/10, p. 6; Dept. Exh. 1, pp. B-4 through B-12, B-14 through B-16.
5. Respondent's abuse of Oxycodone APAP (Percocet) and/or Oxycodone (Roxicodone) does, and/or may, affect her practice as a LPN. Dept. Exh. 1, pp. B-8 and B-9.

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: . . (2) illegal conduct, incompetence or negligence in carrying out usual nursing functions; . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals; (6) fraud or material deception in the course of professional services or activities. . . .

The Board concludes that respondent's conduct as alleged in paragraphs one through five of the Charges is proven by a preponderance of the evidence presented.

Respondent admits many of the allegations, including allegations contained in paragraph three that she diverted Oxycodone APAP (Percocet) and Oxycodone (Roxicodone); that she failed to completely, properly and/or accurately document medical or hospital records; and that she falsified one or more Controlled Substance Receipt Records; and, in paragraph four that she abused or utilized Oxycodone APAP (Percocet) and Oxycodone (Roxicodone) to excess. Tr. 3/17/10, pp. 5-6.

Respondent also stated that as a result of back injuries received in automobile accidents in 1999 and 2007, and a recent muscle tear in her left hip, she was prescribed various pain medications, along with physical therapy, chiropractic care and acupuncture. Dept. Ex. 1, pp. 14-16. However, respondent did not provide any credible explanation as to why she started diverting pain medication from some of the residents in the facility.

The Board finds that the Department sustained its burden of proof as to the remaining allegation in paragraph five which respondent did not admit. There is no evidence in the record that respondent has made any meaningful attempts to get into substance abuse treatment since

CERTIFICATION

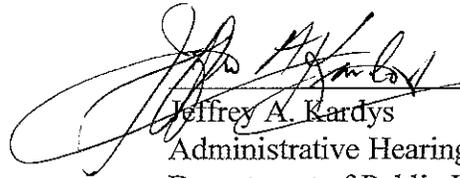
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 19th day of JANUARY 2012, by certified mail, return receipt requested and first class mail to:

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Certified Mail 91-7108-2133-3936-6805-9880

and via email to:

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