

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

Catherine Flannery, LPN
License No. 032300

Petition Nos. 2008-0821-011-045
2008-2008491

MEMORANDUM OF DECISION

Procedural Background

On March 1, 2010, the Department of Public Health ("the Department") filed 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 Catherine Flannery ("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.

The Charges and a Notice of Hearing were delivered to respondent by certified mail. Bd. Exh. 2. A hearing was scheduled for May 5, 2010, but was continued until June 2, 2010, at respondent's request. Bd. Exh. 5.

At the hearing, respondent was present but was not represented by an attorney Tr. 6/2/2010, p. 1; Attorney Linda Fazzina represented the Department Tr. 6/2/2010 p. 1.. Respondent orally answered the Charges. Tr. June 2, 2010, pp. 9-11. The hearing was continued until July 21, 2010, to allow the parties to submit briefs addressing whether the Board had jurisdiction to hear this matter.¹ The Department filed a brief on July 7, 2010. Bd. Exh. 9. The hearing on July 21, 2010, was again continued to allow respondent to have counsel present and to allow additional time to file briefs. Tr. 7/21/10 pp. 8, 11-12; Bd. Exhs. 10-13. On November 17, 2010, the hearing resumed. At that time, respondent was present with Attorney Robert Ricketts Tr. 11/17/10, p. 1. Respondent did not file a brief and conceded that the Board has jurisdiction to adjudicate this matter. Tr. 11/17/10, p. 6.

Following the close of the record on November 17, 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.

¹ The Charges allege conduct between March 2002 and January 2006; however, respondent was first issued a license as a licensed practical nurse on February 17, 2007.

Allegations

1. Paragraph one of the Charges alleges that respondent has been the holder of Connecticut LPN license number 032300. Said license expired on or about December 31, 2009, and has not been renewed as of the date of the Charges.
2. Paragraph two alleges that, at all relevant times, respondent was employed by Oak Hill, a provider of services for people with disabilities. As part of said employment, respondent oversaw the daily operations of a group home located at 90 Saddlebrook Path, Southington, CT (hereinafter "Saddlebrook") and/or had access to resident's accounts, including the ability to sign checks and deposit them into resident's accounts and/or draw funds from said accounts.
3. Paragraph three alleges that between in or about March 2002 and January 2006, respondent stole money from one or more residents' accounts, made false entries to an Oak Hill computer database pertaining to said account(s), and/or cashed social security checks received at Saddlebrook for one or more residents and deposited the funds in her personal account.
4. Paragraph four alleges that the above facts constitute grounds for disciplinary action pursuant to § 20-99(b) of the Statutes, including but not limited to §§ 20-99(b)(2) and (6).

Findings of Fact

1. Respondent admits the factual allegations in paragraphs 2 and 3 of the Charges. Tr. 6/2/10, pp. 10-11; Dept. Exhs. 1 and 2 (under seal).
2. On or about February 2007 respondent was issued license No. 032300 to practice as a licensed practical nurse in the State of Connecticut. Said license expired on or about December 31, 2009 and has not been renewed. Bd Exh. 9; Tr. 6/2/10, pp. 9 and 23.

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; . . . (6) fraud or material deception in the course of professional services or activities . . .

Respondent admits the conduct as alleged in 2 and 3 of the Charges, Tr. 6/2/10 pp. 9-11, Tr 11/17/10 p. 12. The Board concludes that this conduct preceded the time when respondent was licensed as a nurse in Connecticut and that said conduct did not occur while respondent was engaged “in carrying out usual nursing functions” as required by § 20-99(b)(2). However, respondent did engage in “fraud . . . in the course of professional services or activities.” Specifically, while employed in a position in which she was responsible for overseeing the daily operations of the facility, including the oversight of resident bank accounts, she admittedly stole money from one or more residents’ accounts, made false entries in a computer database pertaining to said accounts, and cashed residents’ social security checks, keeping the proceeds.

Although respondent’s license expired on December 31, 2009, and has not been renewed, the Board nevertheless has jurisdiction to take disciplinary action against respondent’s license pursuant to § 19a-14a of the Statutes. This section authorizes disciplinary action against expired licenses so long as the disciplinary action commences within eighteen months of the expiration of the license. In this case, the Charges commencing the disciplinary action were filed on March 1, 2010, well within the eighteen month period.

Finally, although much of the misconduct occurred prior February of 2007, when respondent was issued a license, that conduct may, nevertheless, constitute grounds for disciplinary action. Specifically, § 19a-17 of the Statutes authorizes the Board to impose disciplinary action based on conduct that occurred prior or subsequent to the issuance of a license upon finding the existence of good cause.

Based on the foregoing, the Board concludes that respondent’s conduct as alleged in paragraphs 2 and 3 of the charges constitutes grounds for disciplinary action pursuant to §§ 20-99(b)(6), 19a-14a 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 the following:

1. If, at any time, respondent’s LPN license no. 032300 is reinstated by the Department, said license shall be placed on probation for a period of four (4) years under the following terms and conditions:
 - A. Respondent shall provide a copy of this Memorandum of Decision to any and all employers if employed as a nurse during the probationary period. The Board shall be notified in writing by any employer(s), within thirty (30) days of the

commencement of employment, as to receipt of a copy of this Memorandum of Decision.

- B. If employed as a nurse; respondent shall cause employer reports to be submitted to the Board, by her immediate supervisor during the entire probationary period. Employer reports shall be submitted commencing with the report due on the first business day of month following employment as a nurse. Employer reports shall be submitted monthly during the first year of probation, and quarterly during the second, third and fourth years of probation.
- C. The employer reports shall include documentation of petitioner's ability to safely and competently practice nursing.
- D. Should respondent's employment as a nurse be involuntarily terminated or suspended, respondent and her employer shall notify the Board within seventy-two (72) hours of such termination or suspension.
- E. If respondent pursues further training in any subject area that is regulated by the Department, respondent shall provide a copy of this Memorandum of Decision to the educational institution or, if not the institution, to respondent's instructor. Such institution or instructor shall notify the Department in writing of receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt.
- F. At her expense, respondent shall successfully complete a course in professional ethics and nursing scope of practice. Within thirty days of completion of the course, respondent shall provide proof to the satisfaction of the Board and Department of her successful completion of the course. Said course shall be completed within the first three months of the probationary period.
- G. The Connecticut Board of Examiners for Nursing must be informed in writing prior to any change of address.
- H. All correspondence and reports required by this Decision are to be addressed to:

Bonnie Pinkerton, RN, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P. O. Box 340308
Hartford CT 06134-0308

- 2. Any deviation from the terms of probation, without prior written approval by the Board shall constitute a violation of probation, which will be cause for an immediate hearing on charges

of violating this Order. Any finding that respondent has violated this Order will subject respondent to sanctions under §19a-17(a) and (c) of the General Statutes, including but not limited to, the revocation of her license. Any extension of time or grace period for reporting granted by the Board of Examiners for Nursing shall not be a waiver or preclude the Board's right to take subsequent action. The Board shall not be required to grant future extensions of time or grace periods. Notice of revocation or other disciplinary action shall be sent to respondent's address of record (most current address reported to the Licensure and Registration Section of the Division of Health Systems Regulation of the Department or the Board).

The Board of Examiners for Nursing hereby informs respondent, Catherine Flannery, 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 6th day of April 2011.

BOARD OF EXAMINERS FOR NURSING

By Patricia C Bouffard
Patricia Bouffard, R.N.

CERTIFICATION

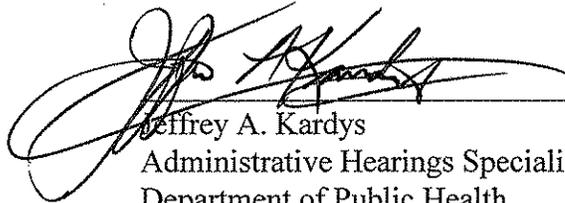
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 7th day of APRIL 2011, by certified mail, return receipt requested to:

Robert Ricketts, Esq.
1 Congress Street, Suite 206
Hartford, CT 06106

Certified Mail RRR #91-7108-2133-3932-0556-3429

and via email to:

Matthew Antonetti, Principal Attorney
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