

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

Jill Withey, L.P.N.
License No. 032368

Petition No. 2010-5503

MEMORANDUM OF DECISION

I

Procedural Background

On November 8, 2012, the Department of Public Health ("Department") filed a Statement of Charges ("Charges") with the Board of Examiners for Nursing ("Board"). Board ("Bd.") Exhibit ("Ex.") 1. The Charges allege violations of Chapter 378 of the General Statutes of Connecticut ("Statutes") by Jill Withey, L.P.N. ("Respondent") which would subject Respondent's licensed practical nurse license to disciplinary action pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-99(b).

Respondent's address of record is 112 Brown Avenue, Apartment 4, Jewett City, Connecticut 06351-1938. Bd. Ex. 2, p. 4.

On December 5, 2012, the Charges and a Notice of Hearing ("Notice") were sent to Respondent's address of record by certified and first class mail. Bd. Ex. 2. On December 21, 2012, Respondent signed for the mail delivery. Bd. Ex. 2, p. 4; Transcript ("Tr.") 2/20/13, p. 3.

The hearing was held on February 20, 2013. Respondent was neither present nor represented by counsel during the hearing. Tr. 2/20/13, p. 4. Attorney Linda Fazzina represented the Department.

Respondent did not file an Answer to Charges. Tr. 2/20/13, p. 4.

During the hearing, the Department orally moved to deem the allegations admitted ("Motion"). Tr. 2/20/13, p. 4.

After the Board determined that the Department had made all reasonable efforts to provide Respondent with written notice of the hearing, the Board granted the Department's Motion. Tr. 2/20/13, pp. 3-4. After the record was closed, Respondent arrived for the hearing. Respondent was informed that she was too late and she could file a motion to reopen the hearing. Tr. 3/20/13, pp. 3-4.

On February 20, 2013, Respondent filed a Motion to Reopen the Hearing (“Motion to Reopen”). Bd. Ex. 3, p. 2. On February 22, 2013, the Department filed its response to Respondent’s Motion to Reopen. Bd. Ex. 3, p. 3. On February 25, 2013, the Board granted Respondent’s Motion to Reopen. Bd. Ex. 3, p. 1.

On March 20, 2013, the second day of hearing was held. Respondent was present, and was not represented by counsel. Attorney Fazzina represented the Department. Tr. 3/20/13, pp. 3-4.

On the record, Respondent orally answered the Charges, to which she admitted to all the allegations. Tr. 3/20/13, pp. 5-7.

At the beginning of the hearing, Respondent was asked to produce treatment records which were more current than the ones on file with the Department. At the time, the Department’s records dated back to October 2012 (Tr. 3/20/13, pp. 8-9), and Respondent did not bring any records with her to the hearing. Tr. 3/20/13, pp. 10-11. The Board requested that Respondent provide the Board with all of her treatment records by April 22, 2013. Tr. 3/20/13, pp. 12-13. The record was kept open and the hearing was continued. Tr. 3/20/13, p. 13; Bd. Ex. 4.

On March 28, 2013, a Notice of Continuation of the Hearing was sent to Respondent by electronic mail and by first class mail. The first class mail was not returned to the Department. Bd. Ex. 4; Tr. 5/15/13, pp. 2-3. On May 7, 2013, the Board’s meeting and hearing agenda for the May 15, 2013 hearing was emailed to Respondent. Tr. 5/15/13, p. 6.

On May 15, 2013, the hearing resumed. Respondent did not appear and was not represented by counsel. Tr. 5/15/13, pp. 2-3. Attorney Leslie Scoville represented the Department.

Each member of the Board involved in this decision attests that 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. *Pet v. Department of Health Services*, 228 Conn. 651 (1994).

II

Allegations

1. In paragraph 1 of the Charges, the Department alleges that Jill Withey of Jewett City, Connecticut is, and has been at all times, as referenced in the Charges, the holder of Connecticut licensed practical nurse license number 032368.
2. In paragraph 2 of the Charges, the Department alleges that at all relevant times, Respondent was employed as a licensed practical nurse at Regency Heights in Danielson, Connecticut (“facility”).
3. In paragraph 3 of the Charges, the Department alleges that in or about June and/or July 2010, while working as a licensed practical nurse at the facility, Respondent:
 - a. diverted controlled substances, including Percocet and Vicodin, from one or more residents;
 - 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 4 of the Charges, the Department alleges that in or about June and/or July 2010, Respondent abused or utilized to excess controlled substances, including Percocet and Vicodin.
5. In paragraph 5 of the Charges, the Department alleges that Respondent’s abuse of controlled substances, including Percocet and Vicodin, does, and/or may affect her practice as a licensed practical nurse.
6. In paragraph 6 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to Conn. Gen. Stat. § 20-99(b), including, but not limited to:
 - a. § 20-99(b)(2);
 - b. § 20-99(b)(5); and/or,
 - c. § 20-99(b)(6)

III

Findings of Fact

1. On March 20, 2013, Respondent appeared at the hearing and orally answered the Charges. Respondent admitted to all of the allegations of the Charges. Tr. 3/20/13, pp. 3-4, 5-7; Tr. 5/15/13, pp. 8-9.

2. On March 20, 2013, the Board requested Respondent to produce all of her treatment records for the Board's consideration. Respondent did not have any records with her. To give Respondent sufficient time to obtain the records that were requested, the Board continued the hearing and asked Respondent to file the records by April 22, 2013. Tr. 3/20/13, pp. 10-13; Tr. 5/15/13, pp. 9-10.
3. On March 28, 2013, a Notice of Continuation of the Hearing was sent to Respondent by electronic and first class mail. Neither the electronic nor the first class mail was returned to the Department. Bd. Ex. 4; Tr. 5/15/13, pp. 2-3.
4. On May 7, 2013, the Board's meeting and hearing agenda for the May 15, 2013 hearing was emailed to Respondent. Tr. 5/15/13, p. 6.
5. The Department provided Respondent with reasonable and adequate written notice of the third day of hearing. Bd. Ex. 4; Tr. 5/15/13, pp. 2-3, 6.
6. Respondent did not file her treatment records, as requested. Tr. 5/15/13, p. 6.

IV

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, 821 (2008).¹ The Department sustained its burden of proof with regard to all of the allegations contained in the Charges.

Conn. Gen. Stat. § 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; . . .

¹ The Board is aware that the Connecticut Supreme Court is reviewing the issue of whether the standard of proof in cases before the Connecticut Medical Examining Board involving physicians should be the preponderance of evidence standard or the clear and convincing standard (*Charles Ray Jones, M.D. v. Connecticut Medical Examining Board*, S.C. 18843). In the present case, the Board finds that even if the standard of proof were clear and convincing evidence, the Department met its burden with respect to all of the allegations contained in paragraphs 1 through 5, inclusive, of the Charges.

On March 20, 2013, Respondent orally admitted to all of the allegations of the Charges. FF 1. The Department established that in June and/or July 2010, Respondent, while working as a licensed practical nurse at the facility, diverted controlled substances, including Percocet and Vicodin, from one or more of the residents of the facility; failed to completely, properly and/or accurately document medical or hospital records; and, falsified one or more Controlled Substance Receipt Records. Also, Respondent failed to provide any treatment records to the Board, as requested on March 20, 2013. FF 2, 6. Therefore, there was no evidence in the record to corroborate Respondent's testimony (Tr. 3/20/13, pp. 9-12), that she was in treatment for her abuse of controlled substances. Tr. 3/20/13, p. 13. Thus, the Board concludes that Respondent's conduct constitutes grounds for disciplinary action pursuant to Conn. Gen. Stat. §§ 20-99(b)(2), (5) and (6) and 19a-17.

V

Order

Based on the record in this case, the above findings of fact and conclusions of law, the Board hereby orders, that license number 032368 held by Jill Withey to practice as a licensed practical nurse in the State of Connecticut is hereby REVOKED.

This Memorandum of Decision becomes effective on the date signed by the Board.

The Board hereby informs Respondent, Jill Withey, and the Department of this decision.

Dated at Hartford, Connecticut this 21st day of August, 2013.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard, D.N.Sc.
Patricia C. Bouffard, D.N.Sc., Chair

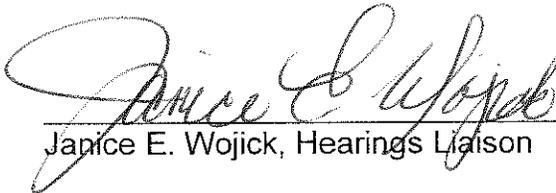
CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 22nd day of August 2013, certified mail return receipt requested mail to:

Jill Withey
112 Brown Avenue, Apt. 4
Jewett City CT 06351-1938

and E-Mail to:

Matthew Antonetti, Principal Attorney
Licensure Regulation and Compliance
Department of Public Health – MS#12LEG
410 Capitol Avenue
P. O. Box 340308
Hartford CT 061343-0308


Janice E. Wojick, Hearings Liaison