

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

Kimkelly Myers  
License No. 033776

Petition No. 2012-239

**MEMORANDUM OF DECISION**

**I  
BACKGROUND**

On March 22, 2012, the Department of Public Health (the "Department") filed a Statement of Charges (the "Charges") with the Board of Examiners for Nursing (the "Board"). Board Ex. 2. The Charges allege Kimkelly Myers (the "Respondent") engaged in conduct that violates Chapter 378 of the Connecticut General Statutes and, therefore, Respondent's licensed practical nurse ("LPN") license is subject to disciplinary action under Conn. Gen. Stat. §§ 19a-17 and 20-99, including but not limited to § 20-99(b)(2).

Based on the allegations in the Charges and the affidavits and reports submitted to the Board, on April 4, 2012, pursuant to Conn. Gen. Stat. §§ 4-182(c) and 19a-17(c), the Board summarily suspended Respondent's LPN license (the "Order"). Bd. Ex. 1.

On April 4, 2012, the Charges, the Order and a Notice of Hearing for April 18, 2012 were sent to Respondent by first-class, certified mail. Bd. Ex. 4.

On April 13, 2012, Respondent's counsel, Donald J. Cretella, requested a continuance of the April 18 hearing. Board Ex. 5. The continuance was granted and a hearing was held on June 20, 2012 and September 5, 2012 (collectively the "Hearing"). Bd. Exs. 5, 6. During the Hearing, Respondent orally admitted the allegations in paragraphs one and two of the Charges and denied those contained in paragraphs three and four. Transcript ("Tr.") at 6-8 (June 20, 2012). At the Hearing, Attorney Matthew Gaidos represented Respondent and Attorney Linda Fazzina represented the Department. Following the close of the record on September 5, 2012, the Board conducted fact finding.

Each Board member 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 applicable law, and the Board's specialized professional knowledge in evaluating the evidence.

**II**  
**THE ALLEGATIONS**

1. In paragraph one of the Charges, the Department alleges that Respondent resides in Waterbury, Connecticut and holds Connecticut LPN license no. 033776.
2. In paragraph two, the Department alleges that Maxim Healthcare Services employed Respondent to care for a minor patient in Danbury, Connecticut.
3. In paragraph three of the Charges, the Department alleges that:

In or about February and/or March 2012, while providing home health care services to said minor patient, respondent on one or more occasions:

- a. Abused said patient and/or exhibited aggressive behavior toward him by flicking her finger(s) on his face and/or by slapping, swatting, pushing, jabbing, poking and/or shoving him;
  - b. Held and/or manipulated the patient's arm and/or hand in a manner that caused the patient to strike himself in the head and/or face;
  - c. Transferred the patient to or from his crib and/or bed in an aggressive or unsafe manner;
  - d. Failed to deliver nursing services to the patient in a manner to ensure well-being and/or safety at all times; and/or
  - e. Performed personal care for said minor patient, including diapering, washing and/or dressing in an aggressive or unprofessional manner.
4. In paragraph four, the Department alleges that Respondent's alleged conduct provides a sufficient basis upon which to impose disciplinary action under Conn. Gen. Stat. § 20-99.

**III**  
**FINDINGS OF FACT**

1. In February and March, 2012, Respondent of Waterbury, Connecticut held Connecticut LPN license no. 033776. Tr. at 6-7 (June 20, 2012).
2. From August 11, 2011 to March 5, 2012, Maxim Healthcare Services of Connecticut ("Maxim") employed Respondent as an LPN. Id. at 7, 17; Dept. Ex. 1, pp. 2-3.

3. In connection with Respondent's employment at Maxim, from August 11, 2011 until March 1, 2012 Respondent was assigned to provide nursing care to "JC," a minor child (the "Employment"). Tr. at 6-7, 17-18 (June 20, 2012); Dept. Ex. 1, pp. 2-3.
4. About two weeks after Respondent began caring for JC, he began acting strangely. Dept. Ex. 3.
5. In January 2012, JC's mother installed surveillance cameras in JC's room. Id.
6. JC's mother viewed conduct on the surveillance camera recordings that caused her to contact Maxim and the local police. Id.
7. During the Employment, Respondent abused and exhibited aggressive behavior toward JC, including, flicking her fingers on JC's face and swatting, pushing, jabbing, poking and shoving JC. Dept. Ex. 2 at 4-5; 5 (sealed).
8. During the Employment, Respondent caused JC's hand to strike JC's head and face. Dept. Ex. 2 at 4-5; 5 (sealed).
9. During the Employment, Respondent transferred JC to and from his crib and bed in an aggressive and unsafe manner. Dept. Ex. 2 at 4-5; 5 (sealed).
10. During the Employment, Respondent failed to continuously ensure JC's well-being and safety. Dept. Ex. 2 at 4-5; 5 (sealed).
11. During the Employment, Respondent diapered, washed and dressed JC in an aggressive and unprofessional manner. Dept. Ex. 2 at 4-5; 5 (sealed).
12. The conduct described in paragraphs seven through eleven, above, violated the acceptable standards of the nursing profession.
13. The conduct described in paragraphs seven through eleven, above is in some cases illegal and in others incompetent or negligent conduct that occurred during the course of Respondent's employment as an LPN.

#### IV DISCUSSION

The Board has jurisdiction over this matter. The Board has "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." Conn. Gen. Stat. § 20-99(a). After a hearing held in accordance with the Uniform Administrative Procedure Act (Conn. Gen. Stat. § 4-166, et seq.) the Board may, among other things, revoke or suspend an LPN's license. Conn. Gen. Stat. 20-99(a). Among other conduct, illegal, incompetent or negligent conduct occurring

while carrying out nursing functions is conduct that fails to conform to the accepted standards of the nursing profession. Conn. Gen. Stat. § 20-99(b). In this case, the Department alleges that Respondent engaged in illegal, incompetent or negligent conduct while engaged in employment as an LPN. Thus, the Board has jurisdiction to hear the case and determine whether licensure sanctions should be imposed.

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). The Department sustained its burden of proof regarding the substantive allegations in the Charges.<sup>1</sup>

The evidence adduced at the Hearing, including Respondent's admission, demonstrates that she resided in Waterbury, Connecticut and held Connecticut LPN license no. 033776 at all relevant times as alleged in Charges paragraph one. FOF 1. The evidence and Respondent's admission also demonstrates that Maxim Healthcare Services employed her to care for a minor patient in Danbury, Connecticut as alleged in Charges paragraph two. FOF 2. As such, the only disputed issue in the case is whether Respondent engaged in conduct that violated the accepted standards of the nursing profession. As discussed below, the evidence demonstrates that Respondent's conduct violated the nursing profession's accepted standards.

The preponderance of the evidence demonstrates that Respondent engaged in all of the conduct alleged in Charges paragraph three except for slapping, as alleged in subsection (a) thereof. JC began acting strangely two weeks after Respondent began caring for him so his mother installed surveillance cameras in his room in January 2012. Subsequently, JC's mother saw conduct on the surveillance camera recordings that caused her to contact Maxim and the local police. FOF 6. The Board viewed relevant portions of the surveillance camera recording copies (the "Video"). Dept. Ex. 5 (sealed).

The Video reveals that Respondent engaged in inappropriate conduct that violates the accepted standards of the nursing profession. In the Video, Respondent can be seen abusing and

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<sup>1</sup> The Board is aware that the Connecticut Supreme Court is reviewing the issue of whether the standard of proof in cases before the 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 was clear and convincing evidence, the Department met its burden with respect to all of the allegations contained in the Charges, as set forth herein.

acting aggressively toward JC. FOF 7. For example, Respondent can be seen flicking her fingers on JC's face and swatting, pushing, jabbing, poking and shoving him. FOF 7. The Video also shows Respondent using JC's hand to strike JC's head and face and transferring JC to and from his crib and bed in an aggressive and unsafe manner. FOF 8, 9. Further, the Video clearly demonstrates that Respondent failed to otherwise ensure JC's well-being and safety while JC was in Respondent's care. FOF 10. The Video also shows Respondent diapering, washing and dressing JC in an aggressive and unprofessional manner. FOF 8. In sum, the Video reveals that Respondent engaged in certain conduct that was, at best, incompetent or negligent, and at worse, illegal, and in each case violated the acceptable standards of the nursing profession. FOF 12, 13.

The Board concludes that, pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-99(b)(2), Respondent's conduct, as alleged in paragraphs 1 through 3 of the Charges and as proven by a preponderance of the evidence constitutes grounds for the disciplinary action ordered below.

**V  
ORDER**

Based on the record in this case and the findings of fact and conclusions of law set forth herein, the Board hereby orders that Respondent's license number 033776 to practice as a licensed practical nurse in the State of Connecticut is hereby **REVOKED**.

This Memorandum of Decision becomes effective on December 5, 2012.

The Board of Examiners for Nursing hereby informs Respondent, Kimkelly Myers, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Hartford, Connecticut this 5<sup>th</sup> day of December, 2012.

BOARD OF EXAMINERS FOR NURSING

By Patricia C. Bouffard, RN, ANS, C.  
Patricia C. Bouffard, RN, Chairperson

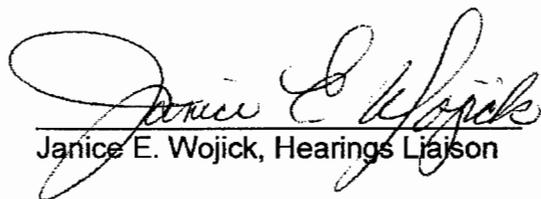
**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 5<sup>th</sup> day of December 2012, certified mail return receipt requested mail to:

Matthew J. Gaidos, Esq.  
Zingaro and Cretella, LLC  
1087 Broad Street  
Bridgeport CT 06604

*and E-Mail to:*

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Hartford CT 061343-0308

  
Janice E. Wojick, Hearings Liaison