CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. P265403351

Richard Pepe
210 Bradley Avenue
Meriden, CT 06450

# STATE OF CONNECTICUT
# BOARD OF EXAMINERS FOR NURSING

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| State of Connecticut<br>Department of Public Health<br>vs.<br>Richard Pepe, RN, APRN<br>Registered Nurse License No. R31471<br>Advanced Practice Registered Nurse License No. 000074<br>Respondent. | CASE PETITION NO. 960422-010-031<br>960422-012-002<br><br>MEMORANDUM OF DECISION |

## PROCEDURAL BACKGROUND

The Board of Examiners for Nursing (hereinafter the "Board") was presented by the Department of Public Health (hereinafter the "Department") with a two (2) Statement of Charges and Motion for Summary Suspension dated April 29, 1996 (Department Exhibits A-F, B-F). Both Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Richard Pepe (hereinafter the "Respondent") which would subject the Respondent's Registered Nurse and Advanced Practice Registered Nurse licenses to disciplinary action pursuant to the General Statutes of Connecticut.

Based on the allegations in both Statement of Charges and accompanying affidavits and reports, the Board found that the continued nursing practice of the Respondent presented a clear and immediate danger to public health and safety. On May 1, 1996, the Board ordered, pursuant to its authority under §19a-17(c) of the General Statutes of Connecticut, that the Registered Nurse and Advanced Practice Registered Nurse licenses of the Respondent be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges (Department Exhibits A-F, B-F).

The Board issued a Notice of Hearing dated May 1, 1996, scheduling a hearing for June 5, 1996 (Department Exhibits A-F, B-F). The hearing was continued at the Respondent's request. The hearing was rescheduled and took place on November 20, 1996, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut. (Department Exhibits A-H, B-H)

Prior to the hearing the Board granted the Department's motion that the Statement of Charges pertaining to the Respondent's Registered Nurse and Advanced Practice Registered Nurse licenses be consolidated and heard at one time. (Department Exhibits A-I, B-I) (Hearing Transcript, November 20, 1996, p. 2)

During the hearing on November 20, 1996, the Department orally amended both Statement of Charges by modifying Paragraphs 3 and 4 and by adding Paragraph 4a. (Hearing Transcript, November 20, 1996, pp. 4-7)

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.

## FACTS

Based on the testimony given and the exhibits offered into evidence, the Board makes the following Findings of Fact:

1. Richard Pepe, hereinafter referred to as the Respondent, was issued Registered Nurse License Number R31471 on November 28, 1978. The Respondent was issued Advanced Practice Registered Nurse License Number 000074 on January 8, 1991. The Respondent was the holder of both licenses at all times referenced in the Statement of Charges. (Department Exhibits A-E, B-E)

2. The Respondent was given due notice of the hearing and charges against him. Department Exhibits A and B indicate that the Summary Suspension Order, Statement of Charges and Notice

of Hearing, and Notice of Continuance of Formal Hearing were delivered to the Respondent and the Respondent's attorney by certified mail.

3. The Respondent was present during the hearing and was represented by counsel. (Hearing Transcript, November 20, 1996, p. 2)

4. The Respondent submitted a written answer to both Statement of Charges. The Respondent orally answered the Department's amendments to both Statement of Charges. (Respondent's Exhibit 1-1) (Hearing Transcript, November 20,1996, pp. 6-8)

5. On or about January 1983, while working as a nurse anesthetist at Jackson Memorial Hospital, Miami, Florida, the Respondent diverted for his own personal use the controlled substance Cocaine. As a result of this conduct the Florida State Board of Nursing suspended and subsequently placed on probation the Florida registered nurse and advanced registered nurse practitioner license of the Respondent. (Department Exhibits A-B, B-B)

6. Pursuant to a Memorandum of Decision dated July 3, 1985, the Connecticut registered nurse license of the Respondent was ordered suspended for a period of five (5) years. The suspension was stayed and the Respondent's license was placed on indefinite probation. Said action was ordered due to the Respondent's diversion and abuse of the controlled substance Cocaine while employed as a nurse anesthetist at Waterbury Hospital, Waterbury, Connecticut during May through July 1984. (Department Exhibits A-C, B-C)

7. The Respondent's registered nurse license was reinstated from indefinite probation on July 1, 1990. (Department Exhibits A-D, B-D)

8. The Respondent has a history of substance abuse which began in the 1970's. The Respondent has a period of abstinence and/or active recovery from on or about 1984 to on or about December 1995. (Hearing Transcript, November 20, 1996, pp. 79-91)

9. On or about 1991, the Respondent began employment as a nurse anesthetist for the Meriden-Wallingford Anesthesia Group. The Respondent provided anesthesia services at Veteran's Memorial Medical Center, Meriden, Connecticut. (Hearing Transcript, November 20, 1996, pp. 70, 159)

10. Beginning on or about December 1995 and continuing through January 1996 the Respondent abused or excessively used the controlled substances Percocet and Xanax. Beginning on or about February 1996 and continuing to on or about March 21, 1996 the Respondent abused or excessively used the medication Toradol. The Respondent diverted the Toradol from hospital supplies at Veteran's Memorial Medical Center. (Hearing Transcript, November 20, 1996, pp. 8, 90-91, 96-97)

11. From on or about mid February 1996 to on or about March 21, 1996, while working as a nurse anesthetist at Veteran's Memorial Medical Center, the Respondent diverted for his own personal use from hospital supplies the controlled substances Fentanyl and Sufentanil. The Respondent abused and/or excessively used the controlled substances Fentanyl and Sufentanil which he had diverted. (Department Exhibits A-A, B-A) (Answer: Respondent's Exhibit 1-1) (Hearing Transcript, November 20, 1996, pp. 97-101)

12. The Respondent accomplished the diversion of the controlled substances Fentanyl and Sufentanil by falsifying controlled substance records. The Respondent documented that the Fentanyl and Sufentanil which he diverted for his own use had been administered to patients. (Department Exhibits A-A, B-A) (Hearing Transcript, November 20, 1996, p. 100)

13. From on or about March 25, 1996 to August 8, 1996 the Respondent underwent inpatient and outpatient chemical dependency treatment at the Institute of Living, Hartford, Connecticut. During the course of treatment the Respondent was diagnosed as having a major depressive disorder. (Respondent's Exhibit 1-3) (Hearing Transcript, November 20, 1996, pp. 26-28)

14. The opinion of the Respondent's psychiatrist is that the Respondent's depressive illness was a contributing factor in the Respondent's December 1995 relapse. (Hearing Transcript, November 20, 1996, pp. 32-35)

15. Subsequent to his treatment at the Institute of Living the Respondent has been receiving individual therapy for chemical dependency and depression, and has been participating in Twelve Step support groups. (Hearing Transcript, November 20, 1996, pp. 39, 59, 108-109)

## DISCUSSION AND CONCLUSIONS

In consideration of the above Findings of Fact, the following conclusions are rendered:

Richard Pepe held a valid Registered Nurse and a valid Advanced Practice Registered Nurse license in the State of Connecticut at all times referenced in the Statement of Charges.

The Notice of Hearing and Statement of Charges sufficiently provided legal notice as mandated by the General Statutes of Connecticut §4-177, §4-182 and §19a-17. The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as §19-2a-1 through §19-2a-30 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges and the hearing process provided the Respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by the General Statutes of Connecticut §4-182(c).

PARAGRAPH 3 of both Statement of Charges, as amended, allege that from approximately mid February 1996 through approximately March 21, 1996, while employed at Veterans Memorial Medical Center, Meriden, Connecticut, the Respondent:

"a. diverted Fentanyl and Sufentanil from patient stock
b. failed to completely, properly and/or accurately document medical or hospital records: and/or,
c. falsified one or more Controlled Substance Receipt Records."

PARAGRAPH 4 of both Statement of Charges, as amended, alleges that from approximately mid February 1996 through approximately March 21, 1996, the Respondent abused or excessively used Fentanyl and Sufentanil.

PARAGRAPH 4a of both Statement of Charges, as amended, alleges that from approximately January 1996 to approximately March 21, 1996, the Respondent abused or utilized to excess, Percocet, Toradol and Xanax.

The Respondent admits these charges. (Answer: Respondent's Exhibit 1-1) (Hearing Transcript, November 20, 1996, pp.-8)

The General Statutes of Connecticut §20-99(b) prohibits conduct which fails to conform to the accepted standards of the nursing profession, which includes "...(2) illegal conduct, incompetence or negligence in performing 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...."

Based on its findings and the Respondent's admissions, the Board concludes that the Respondent's conduct as alleged in Paragraphs 3, 4 and 4a of both Statement of Charges, as amended, is proven and that said conduct constitutes violations of the General Statutes of Connecticut §20-99(b)(2)(5) and (6). Therefore, the Respondent is subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.

In determining appropriate sanctions in this matter the Board may consider, in addition to the charges upon which there is a finding of guilt, any evidence presented during the hearing which is relevant to the Respondent's ability to practice nursing in accordance with the accepted standards of the nursing profession.

Upon review of the testimony of the Respondent and the Respondent's psychiatrist, the Board concludes that the Respondent has not reached a level of stability in his treatment for depression and chemical dependency recovery which renders him able to practice nursing with reasonable skill and safety.

**ORDER**

Pursuant to its authority under §19a-17 and §20-99 of the General Statutes of Connecticut, the Board of Examiners for Nursing hereby orders the following:

1. That for Paragraphs 3, 4 and 4a of the Statement of Charges, the Respondent's registered nurse license, No. R31471, is revoked.

2. That for Paragraphs 3, 4 and 4a of the Statement of Charges, the Respondent's advanced practice registered nurse license, No. 000074, is revoked.

3. Revocation shall become effective on the date this Memorandum of Decision is signed by the Board of Examiners for Nursing.

4. At any future time should the Respondent request reinstatement of his registered nurse or advanced practice registered nurse license, he shall have the burden of presenting relevant evidence to the satisfaction of the Board that he is able to practice nursing with reasonable skill and safety.

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

Dated at Hartford, Connecticut this 19th day of March 1997.

BOARD OF EXAMINERS FOR NURSING

By Nancy L. Befund

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