STATE OF CONNECTICUT

BOARD OF EXAMINERS FOR NURSING

Department of Public Health

vs.

Pamela Gage, RN, Lic. No. R39215
APRN, Lic. No. 000428
Respondent

Petition Nos. 2003-0911-010-076; 2003-0911-012-008

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 Statement of Charges and Motion for Summary Suspension dated January 7, 2004. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Pamela Gage (hereinafter "respondent") which would subject respondent's registered nurse and advanced practice registered nurse licenses to disciplinary action pursuant to *Conn. Gen. Stat.* §§ 19a-17 and 20-99(b).

Based on the allegations in the Statement of Charges and accompanying affidavits and reports, the Board found that respondent's continued nursing practice presented a clear and immediate danger to public health and safety. On January 21, 2004, the Board ordered, pursuant to its authority under § 4-182(c) and § 19a-17(c) of the General Statutes of Connecticut, that respondent's registered nurse and advanced practice registered nurse licenses be summarily suspended pending a final determination by the Board of the allegations contained in the Statement of Charges. Dept. Exh. 1-tab 1.

The Board issued a Notice of Hearing dated January 21, 2004, scheduling a hearing for February 4, 2004. Dept. Exh. 1-tab 1.

Respondent was provided notice of the hearing and charges against her. The Summary Suspension Order, Notice of Hearing and Statement of Charges were served on respondent by State Marshall on January 30, 2004. Dept. Exh. 1-tab 1-4.

The hearing, scheduled for February 4, 2004, was continued and took place on July 21, 2004, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present during the hearing and was represented by counsel. Transcript, July 21, 2004, p. 2.

Respondent filed a written Answer to the Statement of Charges. Resp. Exh. A.

At the conclusion of the hearing, the Board ordered that the Summary Suspension of respondent's registered nurse and advanced practice registered nurse licenses be vacated. Both licenses were reinstated with conditions pending the issuance of this decision.

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.

Findings of Fact

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

1. At all times referenced in the Statement of Charges, respondent was the holder of Connecticut registered nurse license No. R39215 and advanced practice registered nurse license No. 000428. Resp. Exh. 1.1.

2. On or about September 2, 2003, at approximately 7:43 a.m. respondent was involved in a motor vehicle accident in Newtown, Connecticut. An investigating Newtown police officer noticed the smell of alcohol on respondent's breath. Respondent told the investigating officer that she was on her way to see patients. Respondent subsequently failed a field sobriety test administered by the investigating officer. Respondent was arrested for driving while intoxicated. Dept. Exh. 1-tab 2-8.

3. Respondent was transported to Danbury Hospital where a blood test of respondent was positive for alcohol and a urine test was positive for cocaine. Dept. Exh. 1-tab 2-13, tab 2-28.

4. Upon inspection of respondent's belongings at the Newton Police Department, a silver compact containing a white powdery substance was discovered. The powdery substance tested positive for the presumptive presence of cocaine. Respondent was additionally charged with possession of a narcotic. Dept. Exh 1-tab 2-10.

5. Respondent has a history of alcohol abuse since early 2003. Transcript, p. 15.

6. On or about September 12, 2003, respondent began inpatient treatment for alcohol abuse at Silver Hill Hospital, New Canaan, Connecticut. Respondent was discharged from Silver Hills on September 26, 2003. On September 30, 2003, respondent began intensive outpatient treatment at MCAA, Inc., Middlebury, Connecticut. In addition, respondent has continually engaged in individual outpatient treatment at Foothills Counseling Associates, Hawleyville, Connecticut since October 2003. Resp. Exh. A-tab 2.

Conclusions of Law and Discussion

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

Pamela Gage held a valid registered nurse and 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 provided sufficient legal notice as mandated by *Conn. Gen. Stat.* §§ 4-177(a) and (b), and 4-182(c). The hearing was held in accordance with *Conn. Gen. Stat.* Chapters 54 and 368a as well as §§ 19a-9-1 through 19a-9-29 of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges, and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by *Conn. Gen. Stat.* § 4-182(c).

The Department bears the burden of proof by a preponderance of the evidence in this matter.

PARAGRAPH 1 of the Statement of Charges alleges that at all times referenced in the charges, respondent was the holder of Connecticut registered nurse license No. R39215 and Connecticut advanced practice registered nurse license No. 000428.

Respondent admits this paragraph. Resp. Exh. A-1.

PARAGRAPH 2 of the Statement of Charges alleges that on or about September 2, 2003, respondent was arrested and charged with driving while intoxicated and possession of narcotics after sideswiping a utility pole and tree in Newtown, Connecticut while on her way to see patients.

Respondent admits this paragraph. Resp. Exh. A-1.

PARAGRAPH 3 of the Statement of Charges alleges respondent submitted to a toxicology screening after being brought to Danbury Hospital for evaluation, which tested positive for alcohol and cocaine.

Respondent admits this paragraph. Resp. Exh. A-1.

The General Statutes of Connecticut § 20-99 provides in relevant part:

> (a) The Board of Examiners for Nursing 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 . . . (5) abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . .

Based on its findings, the Board concludes that respondent's conduct as alleged in the Statement of Charges is proven by a preponderance of the evidence presented. The Board further concludes that said conduct constitutes grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §§20-99(b)(5) and 19a-17.

The Board concludes that respondent has a history of alcohol abuse for which she is currently being treated. Respondent's abuse of alcohol, if untreated, may affect her practice as nurse. The Board further concludes that no evidence was presented during the hearing to suggest that respondent has abused controlled substances such that her practice as a nurse has been affected.

Order

Pursuant to its authority under *Conn. Gen. Stat.* §§ 19a-17 and 20-99, the Board of Examiners for Nursing hereby orders the following:

1. That for Paragraphs 2 and 3 of the Statement of Charges, respondent's registered license, number R39215, is placed on probation for a period of four (4) years.
2. That for Paragraphs 2 and 3 of the Statement of Charges, respondent's advanced license registered nurse, number 000428, is placed on probation for a period of four (4) years.
3. If any of the following conditions of probation are not met, respondent's registered nurse and advanced practice registered nurse licenses may be subject to disciplinary action pursuant to §19a-17 of the General Statutes of Connecticut.
   A. During the period of probation the Board shall pre-approve respondent's employment and/or change of employment within the nursing profession.
   B. 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.
   C. Respondent shall not prescribe, order, administer, count or have access to controlled substances, or have responsibility for such activities in the course of nursing duties during the first six (6) months of working as a nurse during the probationary period.
   D. If employed as a nurse, petitioner 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 and fourth years of probation, and quarterly during the second and third years of probation.

E. The employer reports cited in Paragraph D above shall include documentation of respondent's ability to safely and competently practice nursing. Employer reports shall be submitted directly to the Board at the address cited in Paragraph R below.

F. Respondent shall notify the Board within thirty (30) days of resuming practice as a certified registered nurse anesthetist (CRNA).

G. While working as a CRNA, respondent shall cause a supervising CRNA or collaborating physician to submit monthly evaluation reports to the Board. The reports shall include an evaluation of a random sampling of respondent's anesthesia records and shall include a review as to the appropriateness of respondent's controlled substance and other medication withdrawals during anesthesia procedures. Evaluation reports shall be submitted directly to the Board at the address cited in Paragraph R below.

H. Should respondent's employment as a nurse be involuntarily terminated, respondent and/or her employer shall notify the Board, within seventy-two (72) hours, of such termination.

I. 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 an institution, to respondent's instructor. Such institution or instructor shall notify the Department in writing as to receipt of a copy of this Memorandum of Decision within fifteen (15) days of receipt. Said notification shall be submitted directly to the Department at the address cited in Paragraph R below.

J. At her expense, respondent shall engage in therapy and counseling for chemical dependency with a licensed or certified therapist, approved by the Board and the Department, during the entire period of probation.

K. Respondent shall provide a copy of this Memorandum of Decision to her therapist. The Board shall be notified in writing by her therapist, within thirty (30) days of the effective date of this Decision, as to receipt of a copy of this Memorandum of Decision.

L. Petitioner shall cause evaluation reports to be submitted to the Board by her therapist during the entire probationary period. Therapist reports shall be

submitted monthly during the first and fourth years of probation, and quarterly during the second and third years of probation.

M. The therapist reports cited in Paragraph L above shall include documentation of dates of treatment, and an evaluation of respondent's progress, including alcohol and drug free status, and ability to safely and competently practice nursing. Therapist reports shall be submitted directly to the Board at the address cited in Paragraph R below.

N. (1) At her expense, respondent shall be responsible for submitting to observed random chain of custody urine screens for alcohol and drugs for the entire probationary period, at a testing facility approved by the Board, after consultation with the Department, as ordered by her therapist, and/or personal physician, and/or employer. Alcohol/drug screening may also be ordered by the Board to ensure compliance with this Order. Random alcohol/drug screens shall be legally defensible in that specimen donor and chain of custody can be identified throughout the screening process.

(2) Respondent shall be responsible for notifying the laboratory, her therapist, the Board, the Department and her prescribing practitioner of any drug(s) she is taking. For any prescription of a controlled substance(s) for more than two consecutive weeks, the respondent shall cause the provider prescribing the controlled substance(s) to submit quarterly reports to the Board and the Department until such time as the controlled substance(s) are no longer prescribed. The reports shall include the following:

1. A list of controlled substances prescribed by this provider for the respondent;
2. A list of controlled substance(s) prescribed by other providers;
3. An evaluation of the respondent's need for the controlled substance;
4. An assessment of the respondent's continued need for the controlled substance(s).

(3) There must be at least two (2) such random alcohol/drug screen monthly during the entire probationary period.

(4) Random alcohol/drug screens shall be negative for the presence of alcohol and drugs. All positive results shall be confirmed by the Gas Chromatograph Mass Spectrometer (GC/MS) testing method. Chain of custody documentation must accompany all laboratory reports and/or the laboratory reports must indicate that chain of custody procedures have been followed.

(5) Random alcohol/drug screens must include testing for the following substances:

Amphetamines	Methadone
Barbiturates	Methaqualone
Benzodiazepines	Opiates (Metabolites)
Cannabinoids (THC Metabolites)	Phencyclidine (PCP)
Cocaine	Propoxyphene
Meperidine (Demerol)	Ethanol (alcohol)

(6) Laboratory reports of random alcohol and drug screens shall be submitted directly to the Board and the Department, at the address cited in Paragraph P below, by respondent's therapist, personal physician or the testing laboratory.

O. Respondent shall not obtain for personal use and/or use alcohol or any drug that has not been prescribed for her, for a legitimate purpose, by a licensed health care practitioner authorized to prescribe medications. Respondent shall not abuse and/or excessively use any drugs that are prescribed for a legitimate medical purpose.

P. Respondent is hereby advised that the ingestion of poppy seeds may produce a positive drug screen result indicating the presence of opiates/morphine and that the ingestion of mouthwash may produce a positive result indicating the presence of alcohol. For that reason, any food substance containing poppy seeds, and mouthwash should be avoided during the probationary period. In the event that a drug/alcohol screen is positive for opiates/morphine and/or alcohol, the ingestion of poppy seeds and/or mouthwash shall not constitute a defense to such positive screen.

Q. The Board must be informed in writing prior to any change of address.

R. All correspondence and reports are to be addressed to:

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

4. 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 of Connecticut, including but not limited to, the revocation of her license. Any extension of time or grace

period for reporting granted by the Board 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 Office of Practitioner Licensing and Certification of the Department of Public Health or the Board).

5. This Memorandum of Decision becomes effective, and the four (4) year probation of registered nurse license R39215 and advanced license registered nurse license 000428 shall commence, on the date this decision is signed by the Board.

The Board of Examiners for Nursing hereby informs respondent, Pamela Gage, and the Department of Public Health of the State of Connecticut of this decision.

Dated at Newington, Connecticut this 2nd day of February 2005.

BOARD OF EXAMINERS FOR NURSING

By _____

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