

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

Department of Public Health

Petition No. 2005-0406-012-003

Petition No. 2005-0406-010-039

vs.

Jeffrey Messinger, RN, APRN, Lic. Nos. 063637
and 002321

MEMORANDUM OF DECISION

Respondent

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 December 19, 2005. Dept. Exh. 1. The Statement of Charges alleged violations of certain provisions of Chapter 378 of the General Statutes of Connecticut by Jeffrey Messinger (hereinafter “respondent”) which would subject respondent’s registered 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 4, 2006, 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 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.

The Board issued a Notice of Hearing dated January 4, 2006, scheduling a hearing for February 1, 2006. Dept. Exh. 1.

Respondent was provided notice of the hearing and charges against him. State marshal, first class mail and certified mail return receipt requested to respondent delivered the Notice of Hearing and Statement of Charges. Dept. Exh. 1.

The hearing took place on February 1, May 3, and October 18, 2006, in Room 2-A, Legislative Office Building, Capitol Avenue, Hartford, Connecticut.

Respondent was present and represented himself during the hearing on February 1, and May 3, 2006, but was not present on October 18, 2006, and was not represented by counsel. Tr. 02/01/06, p. 1; Tr. 05/03/06, p. 1; Tr. 10/18/006, p. 2.

Respondent submitted a written Answer to the Statement of Charges. Board Exh. 1.

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. Jeffrey Messinger of Stratford, Connecticut is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut advanced practice registered nurse license number 002321 and registered nurse license number 063637. Dept. Exh. 2-2.
2. Between at least November 2003, and May 2005, respondent wrote multiple prescriptions for ML, his wife, for:
 - a. Vicodin ES (hydrocodone/APAP 7.5-75), a schedule II narcotic controlled substance;
 - b. Ambien, a schedule IV controlled substance;
 - c. Lorazepam, a schedule IV controlled substance; and/or,
 - d. Xanax, a schedule IV controlled substance.Tr. 10/18/06, 20-23.
3. Beginning on at least November 18, 2003, and continuing until approximately May 20, 2005, respondent wrote multiple prescriptions for ML for Vicodin ES. In the period between April 24, 2005 and May 20, 2005, respondent wrote fourteen prescriptions for ML for Vicodin ES for a total of 840 tablets. The prescriptions were filled at six different pharmacies. Dept. Exh. 2, pp. 1-23; Dept. Exh. 2-5, p. 8; Tr. 10/18/06, pp. 20-23, 33.
4. On or about February 28, 2005, respondent's Connecticut controlled substance registration expired. On or after March 1, 2005, until approximately May 20, 2005, respondent wrote prescriptions for controlled substances for ML. Dept. Exh. 2, pp. 1-23; Tr. 10/18/06, pp. 20-23, 35.
5. Between November 2004 and May 2005, respondent failed to:
 - a. Maintain a medical record for ML; and/or,
 - b. Write prescriptions for ML for a legitimate, medical purpose.Dept. Exh. 2-2; Tr. 10/18/06, pp. 30-31.
6. On or about March 18, 2005, respondent was working as a nurse anesthetist at Shamokin Hospital in Coal Township, Pennsylvania. Dept. Exh. 2-2, p. 10.
7. While respondent was on duty, he diverted succinylcholine, which he self-injected in an attempt to commit suicide. Dept. Exh. 2-2 and 2-24, p. 7; Tr. 10/18/06, pp. 42-43.

Conclusions of Law and Discussion

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

Jeffrey Messinger held valid registered and advanced practice registered nurse licenses 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.

PARAGRAPHS 1 and 7 of the Statement of Charges allege that Jeffrey Messinger of Stratford, Connecticut is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut advanced practice registered nurse license number 002321 and registered nurse license number 063637. Respondent denies this charge. Board Exh. 1.

PARAGRAPH 2 of the Statement of Charges alleges that between at least November 2003 and May 2005, respondent wrote multiple prescriptions for ML, his wife, for:

- a. Vicodin ES (hydrocodone/APAP 7.5-75), a schedule II narcotic controlled substance;
- b. Ambien, a schedule IV controlled substance;
- c. Lorazepam, a schedule IV controlled substance; and/or,
- d. Xanax, a schedule IV controlled substance.

Respondent denies these charges. Board Exh. 1.

PARAGRAPH 3 of the Statement of Charges alleges that beginning on at least November 18, 2003 and continuing until approximately May 20, 2005, respondent wrote multiple prescriptions for ML for Vicodin ES. Considering the time period of April 24, 2005 through May 20, 2005, respondent wrote fourteen prescriptions for ML for Vicodin ES for a total of 840 tablets. The prescriptions were filled at six different pharmacies.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 4 of the Statement of Charges alleges that on or about February 28, 2005, respondent's Connecticut controlled substance registration expired. On or after March 1, 2005, until approximately May 20, 2005, respondent wrote prescriptions for controlled substances for ML.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 5 of the Statement of Charges alleges that between November 2004 and May 2005, respondent failed to:

- a. Maintain a medical record for ML; and/or,
- b. Write prescriptions for ML for a legitimate, medical purpose.

Respondent denies these charges. Board Exh. 1.

PARAGRAPH 8 of the Statement of Charges alleges that on or about March 18, 2005, respondent was working as a nurse anesthetist at Shamokin Hospital in Coal Township, Pennsylvania.

Respondent denies this charge. Board Exh. 1.

PARAGRAPH 9 of the Statement of Charges alleges that while respondent was on duty, he diverted succinylcholine, which he self-injected in an attempt to commit suicide.

Respondent denies this charge. Board Exh. 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: . . . (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. . . .

Based on its findings, the Board concludes that the Department proved the allegations 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)(2), (6) and 19a-17, but that such conduct does not constitute a violation of § 20-99(b)(5) as alleged in paragraph 10(b) of the Statement of Charges.

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, with the exception of Paragraph 10(b), for all the Paragraphs of the Statement of Charges, respondent's advanced practice registered nurse license number 002321 and registered nurse license number 063637, are revoked effective the date this Memorandum of Decision is signed by the Board.

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

Dated at Newington, Connecticut this 17th day of January 2007.

BOARD OF EXAMINERS FOR NURSING

By  Nancy S. Befudo RN

CERTIFICATION

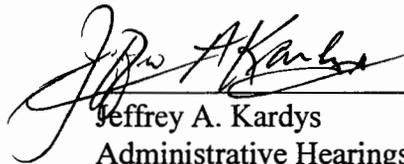
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 18th day of JANUARY 2007, by certified mail, return receipt requested and first class mail, to:

Jeffrey Messinger, RN, APRN
76 Queens Avenue
Stratford, CT 06614

Certified Mail RRR #70042510000753840916

and by Inter-Departmental Mail to:

Stanley K. Peck, Director
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