



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

June 10, 2010

John Kardaras, Esq.
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Via Facsimile 860-527-0331

Matthew Antonetti, Principal Attorney
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410 Capitol Avenue, MS #12LEG
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Via Email

RE: Paul LaChance, III - Petition No. 2009-20091455

Dear Attorneys Kardaras and Antonetti:

Enclosed please find a corrected version of the Memorandum of Decision issued by the **Connecticut Examining Board for Barbers, Hairdressers and Cosmeticians** on June 7, 2010. The Memorandum of Decision has been changed to correct an error in the Petition number.

Sincerely,

Jeffrey A. Kardys
Administrative Hearings specialist/Board Liaison
Public Health Hearing Office

c: Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
Bonnie Pinkerton, RN, Nurse Consultant, Department of Public Health
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**STATE OF CONNECTICUT
CONNECTICUT EXAMINING BOARD FOR BARBERS,
HAIRDRESSERS AND COSMETICIANS**

Paul C. LaChance, III

Petition No. 2009-20091455

MEMORANDUM OF DECISION

Procedural Background

The Department of Public Health (“the Department”) presented the Connecticut Examining Board for Barbers, Hairdressers and Cosmeticians (“the Board”) with a Motion for Summary Suspension (“the Motion”) and a Statement of Charges brought against Paul C. LaChance, III (“respondent”) dated December 30, 2009. Dept. Exh.1.

Based on the allegations in the Charges and the affidavits and reports accompanying the Motion, the Board granted the Motion, finding that respondent’s continued practice as a licensed hairdresser presented a clear and immediate danger to public health and safety and ordered, on January 25, 2010, pursuant to §§ 4-182(c) and 19a-17(c) of the Connecticut General Statutes (“the Statutes”), that respondent’s hairdresser license be summarily suspended pending a final determination by the Board of the allegations contained in the Charges (“the Order”). Board Exh. 1.

On January 25, 2010, the Charges, the Order, and a Notice of Hearing were sent to respondent by certified mail, return receipt requested, and first class mail. On February 8, 2010, the Board held an administrative hearing to adjudicate respondent’s case. Respondent appeared with his attorney, John Kardaras, Esq. The Department was represented by Joelle Newton, Esq. During the hearing, the Department moved to amend the Statement of Charges (“the Charges”). The motion was granted. (Tr. pp. 10, 13). Respondent did not file an Answer.

On February 17, 2010, the Board vacated the January 25, 2010 Summary Suspension Order. It further ordered respondent’s hairdresser/cosmetician license reinstated and restored to probation status subject to the terms of a Reinstatement Consent Order, dated May 9, 2009. As explained in a February 17, 2010 letter informing the parties of the Board’s actions, the Board reinstated the license pending its decision on the merits of the Charges. On April 26, 2010, the Department presented the Board with a new Statement of Charges and Motion for Summary Suspension. The Motion urged the Board to summarily suspend respondent’s license based on

the allegation in the new Charges that respondent tested positive for morphine on February 23, 2010, six days after the Board reinstated his license. The Board granted the Department's Motion and scheduled a hearing for May 10, 2010. That hearing was continued at respondent counsel's request.

This Memorandum of Decision memorializes and serves as notice of the Board's decision on the Department's December 30, 2009 Charges, and the penalty contained herein pertains only to those Charges. Accordingly, respondent's license remains suspended pursuant to the Order of April 26, 2010. This is pending the outcome of the Board's proceedings on the Department's April 26, 2010 Charges.

The Board conducted the hearing on the present Charges in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and §§ 19a-9-1, *et seq.* of the Regulations of the State Agencies ("the Regulations"). All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S&H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent of Manchester, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut hairdresser license number 046168.
2. In paragraph 2 of the Charges, the Department alleges that on May 29, 2009, the Department ordered a Reinstatement Consent Order that placed respondent's license to practice as a hairdresser on probation for two years.
3. In paragraph 3 of the Charges, the Department alleges that the Reinstatement Consent Order specifically provided, in part, that respondent shall submit to observed, random urine screens that are drug and alcohol free.
4. In paragraph 4 of the Charges, the Department alleges that on or about November 9, and/or December 23, 2009, respondent tested positive for cocaine.
5. In paragraph 5 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Reinstatement Consent Order, and subjects respondent's license to revocation or other disciplinary action authorized by the Statutes §§19a-17 and 20-263.

Findings of Fact

1. Respondent of Manchester, Connecticut is, and has been at all times referenced in the Charges, the holder of Connecticut hairdresser license number 046168.
2. On May 29, 2009, the Department ordered a Reinstatement Consent Order that placed respondent's license to practice as a hairdresser on probation for two years. Dept. Exh. 4.
3. The Reinstatement Consent Order specifically provided, in part, that respondent shall submit to observed, random urine screens that are drug and alcohol free. Dept. Exh. 4.
4. On or about November 9, and/or December 23, 2009, respondent tested positive for cocaine. Dept. Exh. 2; Tr. pp. 23-25, 27, 30.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

Conn. Gen. Stat. § 20-263 provides in pertinent part that:

. . . The board may suspend the license of any registered hairdresser . . . , and may revoke the hairdresser . . . license of any person convicted of violating any provision of this chapter or any regulation adopted under this chapter or take any of the actions set forth in section 19a-17 for any of the following reasons: . . . (2) abuse or excessive use of drugs, including alcohol, narcotics or chemicals;

The Department sustained its burden of proof with regard to all the allegations contained in the Charges. The preponderance of the evidence establishes that on May 29, 2009, the Department and respondent entered into a Reinstatement Consent Order that placed respondent's license to practice as a hairdresser on probation for two years, which required, among other things, that respondent shall submit to observed, random urine screens that are drug and alcohol free. On or about November 9, and/or December 23, 2009, respondent tested positive for cocaine.

Respondent admits the allegations but contends that his license should not be revoked. Instead, he requests that the Board order more frequent therapist sessions and urine screens. Respondent testified that (1) he got hooked on pain killers (Percocet) after he had back surgery sometime in 2005 (Tr. pp. 18-19); (2) the terms of the Consent Order required respondent to

participate in regularly scheduled therapy, and Olive Tronchin, Health Program Assistant, suggested that he participate in therapy once per month, which was insufficient to overcome his addiction (Tr. pp. 21, 32); (3) respondent stopped using opiates eight months ago, but then started self-medicating with cocaine six months ago (Tr. pp. 39-30); (4) respondent will continue with the former therapist once a month and with a new therapist twice per week (Tr. p. 37, 40); and, (5) respondent does not present a risk to the public since he does not use drugs intravenously. Tr. p. 44.

Because respondent tested positive for cocaine in violation of his Reinstatement Consent Order with the Department, the Board issues the following Order.

Order

Pursuant to the authority vested in it by §§ 19a-17 and 20-263 of the Statutes, the Board orders that:

1. Respondent shall pay a civil penalty of one thousand dollars (\$1,000) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within ninety days of the effective date of this Decision;
2. All correspondence is 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
3. This Order shall become effective upon the signature of the Board Chairperson.

JUNE 7, 2010
Date


By: Wendy Spangler, Chairperson
Connecticut Examining Board for Barbers,
Hairdressers and Cosmeticians