

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING OFFICE

May 14, 2012

John Kardaras, Esq.
124 Jefferson Street
Hartford, CT 06106

VIA FACSIMILE 860-527-0331
Certified Mail RRR #91 7108 2133 3936 6420 2709

Matthew Antonetti, Principal Attorney
Legal Office
Department of Public Health
410 Capitol Avenue, MS #12LEG
PO Box 340308
Hartford, CT 06134-0308

VIA EMAIL

RE: Paul LaChance - Petition No. 2010-199

Dear Attorney Kardaras and Attorney Antonetti:

Enclosed please find a copy of the Memorandum of Decision issued by the **Connecticut Examining Board for Barbers, Hairdressers and Cosmeticians** in the above-referenced matter.

Sincerely,

Jeffrey A. Kardys
Administrative Hearing Specialist/Board Liaison
Public Health Hearing Section

c: Jennifer Filippone, Section Chief, Practitioner Licensing and Investigations
Bonnie Pinkerton, RN, Nurse Consultant, Department of Public Health



Phone:

860-509-7648

FAX 860-509-7553

Telephone Device for the Deaf: (860) 509-7191

410 Capitol Avenue - MS # 13 PHO

P.O. Box 340308 Hartford, CT 06134

Affirmative Action / An Equal Opportunity Employer

**STATE OF CONNECTICUT
CONNECTICUT EXAMINING BOARD FOR BARBERS,
HAIRDRESSERS AND COSMETICIANS**

Paul C. LaChance, III
License No. 046168

Petition No. 2011-520

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 (“the Charges”) brought against Paul C. LaChance, III (“respondent”) dated January 23, 2012. Bd. 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 23,2012, 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”).

Bd. Exh. 1.

On January 24, 2012, 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 6, 2012, 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.

On February3, 2012, respondent filed an Answer. Bd. Exh. 5.

On February 6, 2012, the Board vacated the January 23, 2012 Summary Suspension Order. It further ordered respondent’s hairdresser/cosmetician license reinstated and restored to probation status subject to the terms of a Memorandum of Decision (“Decision”), dated January 10, 2011.

The Board conducted the hearing on the Charges in accordance with the Statutes 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 or about January 10, 2011, the Board issued a Decision in Petition No. 2010-199 that placed respondent’s license on probation until May 29, 2012 and required respondent to submit to biweekly random urine screens.
3. In paragraph 3 of the Charges, the Department alleges that on or about May 11, 2011 and/or December 6, 2011, respondent failed to appear and submit for a urine screen.
4. In paragraph 4 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 Decision, 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. Bd. Exh. 5.
2. On May 29, 2009, the Board ordered a Reinstatement Consent Order (“Consent Order”) that placed respondent’s license on probation for two years. Bd. Exh. 3, p. 6.
3. The Consent Order prohibited respondent from obtaining or using during the probationary period, alcohol or legend drugs unless prescribed for a legitimate, therapeutic purpose. Bd. Exh. 3, pp. 6-9.
4. The Consent Order also required respondent to undergo frequent random urine screens and provided that for him to avoid further discipline, the screen must be negative for drugs and alcohol. Bd. Exh. 3, pp. 6-9.

5. On January 10, 2011, the Board issued a Decision in Petition No. 2010-199 that extended respondent's probation until May 29, 2012, having found after a hearing that respondent tested positive for morphine in violation of the Consent Order. Bd. Exhs. 3, pp. 6-9; Bd. Exh. 5.
6. The Decision requires respondent, as a condition of his probation, to refrain from using alcohol and controlled substances or legend drugs not prescribed by a licensed health care professional authorized to prescribe medications. Bd. Exh. 3, pp. 6-9.
7. The Decision further requires respondent to submit, at least biweekly, during the probationary period, to random observed urine screens for alcohol, controlled substances, and legend drugs. Bd. Exh. 3, pp. 6-9.
8. The Decision requires all of respondent's random urine screens to be negative for alcohol, controlled substances, and legend drugs, except for medications prescribed by respondent's physician, if he is to avoid further discipline. Bd. Exh. 3, pp. 6-9.
9. The Decision also provides that respondent's failure to submit a urine sample when requested to do so by his monitor shall be deemed a positive screen. Bd. Exh. 3, pp. 6-9.
10. On May 11 and December 6, 2011, respondent failed to appear and submit for a urine sample when asked by his monitors to do so. Dept. Exh. 1, pp. 1-4; Tr. pp., 10-11; 13-17, 49-50, 57-62.

Discussion and Conclusions of Law

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); *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 record establishes that on January 10, 2011, the Board issued a Decision that placed respondent's license to practice as a hairdresser on probation until May 29, 2012, which required, among other things, that respondent shall submit to observed, random urine screens that are drug and alcohol free. On May 11 and December 6, 2011, respondent failed to appear and submit for a urine screen.

With respect to the allegations in paragraph three of the Charges that respondent failed to appear and submit for a urine screen on May 11, 2011, the Department sustained its burden of proof. The evidence establishes, and during the hearing, respondent admitted that he failed to appear and submit for a urine screen on May 11, 2011. The Department established by a preponderance of the evidence that on May 11, 2011, neither his screening monitor, Ms. Dawn Kalinsky, Senior Client Services Representative, Foley Carrier Services, nor Ms. Olive Tronchin, Health Program Assistant, Practitioner Licensing and Investigation section, were able to reach respondent by phone. Between the two of them, they left respondent a total of six phone messages, on his cell phone and at his job. Respondent did not return any of their calls. However, respondent testified that when he realized that he had missed their phone calls, he immediately called Ms. Tronchin the next day and explained that he was home sick with sinusitis and a fever, slept most of the day, and could not get a cellular signal in the basement where he was resting. About a week later, respondent submitted a note to the Department from his physician that documented his illness and his failure to appear for a urine screen on May 11, 2011 was excused. Dept. Exh. 1, pp. 5-9; Tr. pp. 11-12, 49-50. Thus, the Board finds that since respondent's failure to appear for a urine screen on May 11, 2011 was excused, it does not rise to a level that warrants disciplinary action.

With respect to the allegations in paragraph three of the Charges that respondent failed to appear and submit for a urine screen on December 6, 2011, the Department sustained its burden of proof. Both Ms. Tronchin and respondent testified that on December 12, 2011, he contacted Ms. Tronchin and his new screening monitor, Ms. Aleyda Martinez, an employee of Concentra Urgent Care, to explain that he had not appeared for a urine screen on December 6, 2011 because he failed to retrieve his messages until the weekend of December 10 and 11, 2011. Later he reported and was screened on December 15 and 28, 2011.

Respondent sought to sow doubt as to whether he was summoned for a urine screen on December 6, 2011.¹ The preponderance of the credible evidence, however, establishes that respondent was contacted on December 6, 2011, to report for random screening. Moreover, even if December 6, 2011, was not the contact date, respondent admits to belatedly responding to a missed screening call on December 12, 2011, supporting a finding that he missed a screen that month.

As for respondent's claim that he missed the screen because he did not check his messages, he is responsible for checking his phone regularly for messages to ensure that he does not miss any calls for a random screening, and it is incumbent on him to do so to avoid violating the terms of his probation. His negligence in failing to check his messages cannot, therefore, excuse his failure in this case to report for screening when asked to do so. To hold otherwise would be to enable him to defeat the purpose of random screening and nullify that condition of his probation by simply ignoring his messages and calling to arrange for a screening when it suits him. For example, in this instance, at least four days allegedly elapsed before respondent allegedly retrieved his phone messages, and six days elapsed before he contacted Ms. Tronchin and Ms. Martinez, his monitor. Worse still, he did not undergo a screening until December 15, 2011, nine days after he was called. A system that allows him to delay being tested for over a week after being summoned, when presumably he could have gotten rid of any drug or alcohol in his body, is hardly random. It is hardly random because it forewarns respondent of an impending screening and allows him to determine the scheduling of the screening by choosing when to contact his monitor. Such a delayed screening cannot but raise the inference in this case that he

¹ This date occurred shortly after a change in collection sites. Though Ms. Martinez, who did not testify, subsequently claimed that she had no record or recollection of scheduling respondent for screening on December 6, 2011, Ms. Tronchin testified that she noted in her files, and she recalled independently, that she and her supervisor, Bonnie Pinkerton, were notified on December 12, 2011, that respondent missed his urine screen on December 6, 2011—she through a phone call from respondent and Bonnie Pinkerton through a phone call from Ms. Martinez. Tr. pp. 13-17. Respondent himself testified that he called Ms. Martinez and Ms. Tronchin about a missed screen on December 12, 2011, after discovering an “old” phone message from Ms. Martinez, who by her own admission, did not receive his information, including presumably his contact information, until November 30, 2011, stating that “[T]oday is the day.” Tr. p. 52. Though respondent testified that he was uncertain of the date of the message, he would not have called Ms. Martinez to inquire about a missed screen or told Ms. Tronchin that he missed a screen had he not realized that the message was an “old” one and understood the word “today” in the message to refer to an earlier date than December 12, 2011, when he claimed he first listened to the message. He would instead have reported to Concentra on December 12, 2011, to submit his urine sample for testing. In sum, his conduct concerning the message is consistent with a missed screen. His claim that the message could have been left on December 12, 2011, and that he may not have been scheduled for screening before December 15, 2011, is therefore, an afterthought.

was not alcohol and drug free when his monitor called him on December 6, 2011, especially given his weak and incredible justification for the delay. In any case, at the minimum, his explanation for the delay bespeaks an unacceptable lack of attentiveness to his professional obligation under the terms of his probation, especially given that he is on notice that a missed screen constitutes a positive screen.

Respondent testified that he was “hysterical” and “worried” because he had missed a screen. Tr. p. 62. With better communication between respondent and the screening monitor, and more diligence on respondent’s part, there should be no more “near misses.” Given that respondent should now fully appreciate the seriousness of his responsibility to maintain consistent and timely communication with his screening monitor, the Board finds that respondent can continue to practice as a licensed hairdresser with reasonable skill and safety under the terms of this Order. Thus, the Board will not suspend or revoke his license at this time.

Nonetheless, in light of the December 6, 2011 violation of paragraph 1b(1) of the terms of the probation ordered January 10, 2011, additional disciplinary action pursuant to §§20-263(2), and 19a-17(c) of the Statutes is warranted. Therefore, the Board enters the following Order, which replaces, in its entirety, the Order issued on January 10, 2011.

Order

Pursuant to the authority vested in it by §§19a-17 and 20-263 of the Statutes, the Board orders with respect to hairdresser license number 046168 issued to Paul LaChance, III, in Petition No. 2011-520, that:

1. Respondent’s license shall remain on probation until August 31, 2012, under the following terms and conditions:
 - a. Respondent shall participate in regularly scheduled therapy at his own expense with a licensed psychiatrist, psychologist or substance abuse counselor, pre-approved by the Department (“therapist”).
 - (1) Respondent shall provide a copy of this Decision to his therapist.
 - (2) Respondent’s therapist shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Decision within 15 days of receipt.

- (3) If the therapist determines that therapy is no longer necessary, that a reduction in frequency of therapy sessions is warranted, or that respondent should be transferred to another therapist, the therapist shall advise the Department, and the Department shall pre-approve said termination of therapy, reduction in frequency of therapy sessions, and/or respondent's transfer to another therapist.
 - (4) The therapist shall submit reports once per month for the entire period of probation, which shall address, but not necessarily be limited to, respondent's ability to practice as a hairdresser in an alcohol and substance free state safely and competently. Said reports shall continue until the therapist determines that therapy is no longer necessary or the period of probation has terminated.
 - (5) The therapist shall immediately notify the Department in writing if the therapist believes respondent's continued practice poses a danger to the public, or if respondent discontinues therapy and/or terminates his or her services.
- b. During the entire probationary period, respondent shall refrain from the ingestion of alcohol in any form and the ingestion, inhalation, injection or other use of any controlled substance and/or legend drug unless prescribed or recommended for a legitimate purpose by a licensed health care professional authorized to prescribe medications. In the event a medical condition arises requiring treatment utilizing controlled substances, legend drugs, or alcohol in any form, respondent shall notify the Department and, upon request, provide such written documentation of the treatment as is deemed necessary by the Department.
- (1) During the entire probationary period, respondent shall submit to biweekly random observed urine screens for alcohol, controlled substances, and legend drugs. Respondent shall submit to such screens on a more frequent basis if requested to do so by the therapist, the Department, or the Board. Said screens shall be administered by a facility approved by the Department. All such random screens shall be legally defensible in that the specimen donor and chain of custody shall be identified throughout the screening process. All

laboratory reports shall state that the chain of custody procedure has been followed.

- (2) Respondent shall cause to have the facility provide monthly reports to the Department on the urine screens for alcohol, controlled substances and legend drugs. All such screens shall be negative for alcohol, controlled substances, and legend drugs, except for medications prescribed by respondent's physician. If respondent has a positive urine screen, the facility shall immediately notify the Department. All positive random drug and alcohol screens shall be confirmed by gas chromatograph/mass spectrometer testing.
 - (3) Respondent understands and agrees that if he fails to submit a urine sample when requested by his monitor, such missed screen shall be deemed a positive screen.
 - (4) Respondent shall notify each of his health care professionals of all medications prescribed for him by any and all other health care professionals.
- c. 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.
 - d. Respondent shall attend "anonymous" or support group meetings on an average of four times per month, and shall provide monthly reports to the Department concerning his record of attendance.
 - e. During the period of probation, respondent shall report to the Department any arrest under the provisions of §14-227a of the Statutes. Such report shall occur within 15 days of such event.
2. The Board must be informed in writing prior to any change of address.

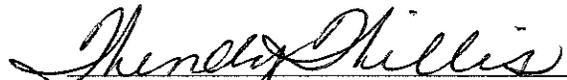
3. All correspondence and reports are to be addressed to:

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

Ms. Pinkerton can also be contacted at the following email address:
bonnie.pinkerton@ct.gov.

4. Respondent shall pay all costs necessary to comply with this Decision.
5. This Order shall become effective upon the signature of the Board Chairperson.

5/14/12
Date


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

CERTIFICATION

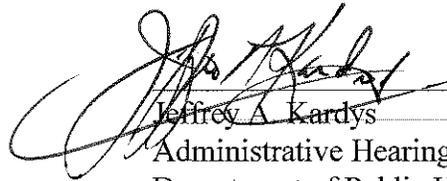
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 14th day of May 2012, by certified mail, return receipt requested to:

John Kardaras, Esq.
124 Jefferson Street
Hartford, CT 06106

Certified Mail RRR #91 7108 2133 3936 6420 2709

and via email to:

Matthew Antonetti, Principal Attorney
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