

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

Mary Beth Montesi

Petition No. 2004-0407-020-009

**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 Statement of Charges ("the Charges") brought against Mary Beth Montesi ("respondent") dated May 20, 2004. Dept. Exh. 1. The Charges and Notice of Hearing were sent to respondent by certified mail, return receipt requested, and first class mail on July 15, 2004. Dept. Exh. 1. The Notice of Hearing scheduled a hearing for August 30, 2004, and notified respondent that the hearing would be held before the Board. Board Exh. 1.

On August 30, 2004, the Board held an administrative hearing to adjudicate respondent's case. Although the Department made sufficient and reasonable efforts to effectuate notice, respondent neither appeared nor was represented. Joelle Newton, Esq. represented the Department. At the hearing, the Department moved to deem the allegations admitted because of respondent's failure to file an Answer. Dept. Exh. 3. The Board granted the motion. Tr. pp. 4-5.

The Board conducted the hearing in accordance with Connecticut General Statutes Chapter 54 (the Uniform Administrative Procedure Act) and §§19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies ("the Regulations"). All Board members involved in this decision received copies of the entire record. All Board members involved in this decision 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 Mary Beth Montesi of Niantic is, and has been at all times referenced in the Charges, the holder of Connecticut hairdressing and cosmetology license No. 049222.

2. In paragraph 2 of the Charges, the Department alleges that in November 1993, respondent was found guilty of the sale of illegal drugs, operating of a drug factory, possession of narcotics and possession of a controlled substance. This conviction resulted in a Prelicensure Consent Order dated July 14, 1998 ("the Consent Order"), placing respondent's license on probation for a period of two years.
3. In paragraph 3 of the Charges, the Department alleges that pursuant to the Consent Order, respondent was to: (1) submit to urine screens for drugs and alcohol and submit the lab reports to the Department; (2) attend support group meetings and submit attendance logs to the Department; and, (3) notify the Department when she was released from York Correctional Institute.
4. In paragraph 4 of the Charges, the Department alleges that to date, no urine screens have been ever been conducted, nor have any lab reports been submitted.
5. In paragraph 5 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of the probation as set forth in the Consent Order, and subjects respondent's license to revocation or other disciplinary action authorized by §§19a-17 and 20-263 of the Connecticut General Statutes.
6. In paragraph 6 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §20-263.
7. The Department requests that the Board revoke or take other disciplinary action against respondent's license as authorized by §§19a-17 and 20-263 of the Connecticut General Statutes.

#### *Findings of Fact*

1. The Department provided adequate, reasonable, and actual notice of the hearing in this matter by sending such notice to respondent. Respondent received the Notice of Hearing. Dept. Exh. 3.
2. All of the factual allegations contained in the Statement of Charges are deemed admitted. In particular,
  - a. In November 1993, respondent was found guilty of the sale of illegal drugs, operating of a drug factory, possession of narcotics and possession of a controlled substance. This conviction resulted in a Consent Order placing her license on probation for a period of two years.
  - b. Pursuant to the Consent Order, respondent was to: (1) submit to urine screens for drugs and alcohol and submit the lab reports to the Department; (2) attend support group meetings and submit attendance logs to the Department; and, (3) notify the Department when she was released from York Correctional Institute.
  - c. To date, no urine screens have been ever been conducted, nor have any lab reports been submitted.

### ***Discussion and Conclusions of Law***

The Board finds that 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.

Section 19a-10 of the Connecticut General Statutes provides in pertinent part: "Any board . . . , may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health."

Section 19a-11 of the Connecticut General Statutes provides in pertinent part: "Any board . . . may, in its discretion, issue an appropriate order to any person found to be violating an applicable statute or regulation, providing for the immediate discontinuance of the violation."

The Board finds that the Department has sustained its burden of proof with regard to all of the allegations in the Charges. Since respondent did not file an Answer, the allegations are deemed admitted pursuant to §19a-9-20 of the Regulations. The only allegations that form the basis of this Order are that respondent failed to submit to urine screens for drugs and alcohol and submit the laboratory results to the Department. Since there are no allegations that respondent failed to attend support group meetings, submit attendance logs to the Department, and notify the Department when she was released from York Correctional Institute, no findings are made regarding whether respondent violated those terms of the Consent Order and this Order is not based on any such claims.

Accordingly, based solely on findings that respondent failed to submit to urine screens thus violating the Prelicensure Consent Order, the Board finds that respondent violated section 20-263 of the Connecticut General Statutes and concludes that there is sufficient basis upon which to issue the following order.

### ***Order***

Based upon the record in this case, the above findings of fact and the conclusions of law, and pursuant to the authority vested in it by *Conn. Gen. Stat.* §19a-17 and §20-263, the Board orders the following in the case of Mary Beth Montesi, H.C., Petition No. 2004-0407-020-009, who holds Connecticut Hairdressing and Cosmetology license number 049222:

1. Respondent shall pay a civil penalty of five hundred dollars (\$500.00) 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, be payable within thirty days of the effective date of this Decision, and shall be sent to:

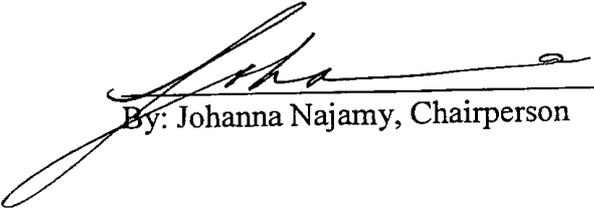
Bonnie Pinkerton  
Department of Public Health  
410 Capitol Avenue, MS #12HSR  
P.O. Box 340308  
Hartford, Connecticut 06134-0308.

2. Respondent's license is hereby revoked.
3. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Examining Board for  
Barbers, Hairdressers and Cosmeticians

4/25/05

Date

  
By: Johanna Najamy, Chairperson