

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

### PUBLIC HEALTH HEARING OFFICE

July 15, 2013

Melissa Smith  
58 Rowland Drive  
East Hartford CT 06118

CMRRR # 91 7199 9991 7032 2703 7032  
First Class Mail

Matthew Antonetti, Principal Attorney  
Licensure Regulation and Compliance  
Department of Public Health  
410 Capitol Avenue - MS#12LEG  
P. O. Box 340308  
Hartford CT 06134-0308

E-Mail

**RE: Melissa Smith, Radiographer**

**Petition No. 2012-1190**

Dear Ms. Smith and Attorney Antonetti:

Enclosed please find a copy of the Final Memorandum of Decision rendered by Hearing Officer Joanne V. Yandow on July 15, 2013 in the above-referenced case.

Sincerely,

  
Janice E. Wojick, Hearings Liaison  
Public Health Hearing Office, MS #13PHO  
Tel. 860-509-7566 FAX 860-509-7553

- c: Jewel Mullen, M.D., M.P.H., M.P.A., Commissioner  
Lynn Rioux, Paralegal Specialist, Office of the Attorney General  
Wendy H. Furniss, Branch Chief, Healthcare Quality and Safety  
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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE

IN RE: MELISSA SMITH, : Petition No. 2012-1190  
RADIOGRAPHER, LICENSE NUMBER :  
001937, :  
Respondent. : July 15, 2013

**MEMORANDUM OF DECISION**

**I  
BACKGROUND**

On March 19, 2013, the Department of Public Health, (“Department”) filed a Statement of Charges, (“Charges”) against Melissa Smith (“Respondent”) alleging that Respondent violated Conn. Gen. Stat. § 20-74cc by reporting to work on April 3, 2012 in an impaired state. Record Ex. (“R”) 1.

On said date, the Department also filed a Motion for Summary Suspension based on the Charges. R. 2.

On March 21, 2013, Marianne Horn, who was designated by the Commissioner of the Department as the hearing officer for this matter, granted the Motion for Summary Suspension (the “Summary Suspension Order”). R. 3, 4. The Summary Suspension Order included notice that a hearing in the matter would be held on April 4, 2013.

On March 22, 2013, Department sent Respondent, among other things, a Notice of Hearing notifying Respondent that the matter was scheduled for a hearing on April 4, 2013 and advising Respondent of the potential consequences for failing to file an answer responding to the Charges and for failing to appear at the hearing. R. 5.

On March 25, 2013, the Department’s Commissioner designated Joanne V. Yandow, in lieu of Marianne Horn, as the hearing officer to rule on all motions, determine

findings of fact and conclusions of law and issue an Order after conducting a hearing. R. 6.

On March 27, 2013, a marshal served a copy of said Notice of Hearing, Summary Suspension Order and Statement of Charges on Respondent by leaving a copy of it at her usual place of abode. R. 7.

On April 4, 2013, the Hearing Officer held an administrative hearing (the "Hearing") regarding the Charges in accordance with Conn. Gen. Stat. § 4-166, et seq. (Uniform Administrative Procedure Act ("UAPA")) and Conn. Agencies Regs. § 19a-9-1, et seq. See Transcript (Apr. 4, 2013)("Tr."). Respondent did not appear personally or via counsel at the Hearing. Attorney Linda Fazzina represented the Department during the Hearing.

This decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusion of law and order.

## II THE ALLEGATIONS

In the Charges, the Department claims that:

1. [At all relevant times, Respondent held] Connecticut radiographer license number 001937.
2. At all relevant times, [R]espondent was employed by Windham Hospital of Willimantic, Connecticut as a radiographer.
3. On or about April 3, 2012, [R]espondent appeared impaired at work and/or exhibited behavioral changes such as slurred speech, imbalance, staggering and/or inability to log onto a computer.
4. On or about April 3, 2012, [R]espondent abused or utilized alcohol to excess.
5. Respondent's abuse of alcohol does and/or may affect her practice as a radiographer.

6. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-74cc.

R. 1

### III FINDINGS OF FACT

1. Respondent failed to file an answer responding to the Charges.
2. A marshal effected service of the Notice of Hearing, Summary Suspension Order and Statement of Charges on Respondent. R. 7.
3. Respondent failed to appear at the Hearing.
4. On or about April 3, 2012 and at times before and after said date, Respondent of East Hartford, Connecticut held Connecticut radiographer license number 001937.
5. On or about April 3, 2012, [R]espondent was employed by Windham Hospital of Willimantic, Connecticut as a radiographer.
6. On or about April 3, 2012, [R]espondent appeared impaired at work and/or exhibited behavioral changes such as slurred speech, imbalance, staggering and/or inability to log onto a computer.
7. On or about April 3, 2012, [R]espondent abused or utilized alcohol to excess.
8. Respondent's abuse of alcohol does and/or may affect her practice as a radiographer.
9. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-74cc.

### IV DISCUSSION

The Department has jurisdiction to hear this matter. Pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-74cc, the Department has jurisdiction to conduct a hearing and take disciplinary action for cases involving allegations of improper conduct committed by a radiographer. In this case, the Department alleges that Respondent is a licensed radiographer who appeared at work under the influence of alcohol in violation of Conn. Gen. Stat. § 20-74cc. Bd. Ex. 1. Thus, the Board has jurisdiction over this matter.

Respondent has admitted all of the material allegations in the Charges. Under the rules of practice, allegations in the charges that are not properly answered shall be deemed admitted. Conn. Agencies Regs. §§ 19a-9-19(c), 19a-9-20 (emphasis added). In addition, the Notice of Hearing sets forth the obligations to file an answer and appear at the Hearing and the consequences of failing to do so. R. 5 at 1, 2. In this case, although a marshal duly served the Notice of Hearing on Respondent in compliance with Conn. Agencies Regs. § 19a-9-18, Respondent did not file an answer responding to the charges or appear at the hearing. Findings of Fact (FOF) 1, 2, 3. As such, during the Hearing, the Hearing Officer granted the Department's oral motion to deem the allegations admitted. Tr. at 9. Thus, Respondent has been deemed to have admitted each and every allegation contained in the Charges.

The Department has proven each and every material allegation contained in the Charges. The Department bears the burden of proving its case by a preponderance of the evidence in this administrative proceeding.<sup>1</sup> Goldstar Medical Services, Inc. v. Dept. of Social Services, 288 Conn. 790, 821 (2008). In this case, as noted above, Respondent is deemed to have admitted the material allegations in the Charges. Thus, the Department has met its burden of proof as to each and every material allegation contained therein.

The admitted conduct renders Respondent's license subject to sanctions, including, among others, revocation. Where a party has been deemed to have impliedly admitted the allegations of the complaint, the pleader is entitled to judgment or relief if the allegations

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<sup>1</sup> The undersigned is aware that the Connecticut Supreme Court is reviewing the issue of whether the standard of proof in cases before the Connecticut Medical Examining Board involving physicians should be the preponderance of evidence standard or the clear and convincing standard. Charles Ray Jones, M.D., v. Connecticut Medical Examining Board, S.C. 18843. In the present case, the undersigned finds that even if the standard of proof was clear and convincing evidence, the Department met its burden with respect to all of the allegations.

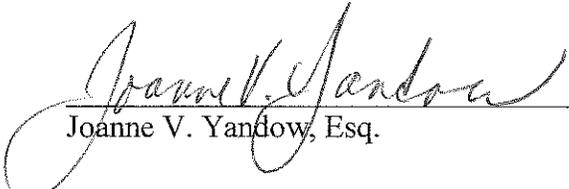
of the complaint are sufficient to support a claim for judgment or relief. See Comm'n'r of Social Services v. Smith, 265 Conn. 723, 737 (2003). Under Conn. Gen. Stat. § 20-74cc, the Department can discipline the license of a radiographer who “fails to conform to the accepted standards of the radiographer profession, including, but not limited to, the following: ... negligent, incompetent or wrongful conduct in professional activities [and] abuse or excessive use of drugs, including alcohol, narcotics or chemicals.” Conn. Gen. Stat. § 20-74cc. In this case, Respondent has admitted to abusing or utilizing alcohol to excess. FOF 7. Such conduct violates Conn. Gen. Stat. 20-74cc and renders Respondent’s license subject to possible sanctions.

License revocation is an appropriate remedy. Under Conn. Gen. Stat. § 19a-17(1), which sets forth the permissible disciplinary actions for violating Conn. Gen. Stat. § 20-74cc, the permissible sanctions include license revocation. The Department has requested that Respondent’s license be revoked. Tr. at 9-10. In this case, Respondent reported to work after abusing or using alcohol to an excess. FOF 6-8. In light of the nature of the misconduct, license revocation is an appropriate remedy.

**ORDER**

Pursuant to Conn. Gen. Stat. §§ 19a-17 and 20-74cc, based on the record, the above findings of fact and conclusions of law, this Hearing Officer finds that the Department has proven the allegations contained within the Charges and, therefore, **ORDERS** that the Connecticut radiographer license (no. 001937) of Melissa Smith be and is hereby **REVOKED**. This Order is effective upon the date specified above.

July 15, 2013  
Date

  
\_\_\_\_\_  
Joanne V. Yandow, Esq.

**CERTIFICATION**

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Memorandum of Decision was sent this 15<sup>th</sup> day of July, 2013 certified mail return receipt requested and first class mail to:

Melissa Smith  
58 Rowland Drive  
East Hartford CT 06118

*and E-Mail to:*

Matthew Antonetti, Principal Attorney  
Licensure Regulation and Compliance  
Department of Public Health  
410 Capitol Avenue – MS#12LEG  
P. O. Box 340308  
Hartford CT 061343-0308

  
Janice E. Wojick, Hearings Liaison