



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Donna Harvey-Porto, Radiographer  
P.O. Box 296  
Branford, Connecticut 06405

Petition No. 960814-28-004

### FINAL DECISION

#### PROCEDURAL BACKGROUND

The Department of Public Health ("Department") issued a Statement of Charges against Donna Harvey-Porto, Radiographer ("Respondent") dated January 10, 1997. (Department Exhibit 2). The Statement of Charges alleged that the Respondent's conduct was grounds for disciplinary action pursuant to Connecticut General Statutes §20-74cc.

Prior to the initiation of the present charges, the Department offered the Respondent the opportunity to attend a compliance conference to discuss the merits of the Department's case against her. The Respondent was informed that the Department was contemplating the initiation of formal proceedings to seek revocation of her license or other disciplinary action. (Department Exhibit 1).

On January 24, 1997, the Commissioner of the Department of Public Health appointed this Hearing Officer to hear this case and to determine findings of fact and conclusions of law and to issue an order upon the conclusion of the hearing. (Department Exhibit 2).

The Department served the Notice of Hearing, dated January 24, 1997, and the Statement of Charges on the Respondent by certified mail, return receipt requested. The domestic return receipt, dated February 6, 1997 and signed "Donna Harvey-Porto,"



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was received by the Department on February 18, 1997. (Department Exhibit 2). The Respondent did not submit an Answer to the Statement of Charges.

The administrative hearing was held on March 13, 1997. It was held in accordance with Chapter 54, Section 19a-2a, and Section 19a-14(c) of the Connecticut General Statutes; and Section 19-2a-1, et seq. of the Regulations of Connecticut State Agencies. Judith P. Lederer, Esq., represented the Department. The Respondent did not appear nor did a representative appear on her behalf.

At the hearing on March 13, 1997, the Department orally amended the Statement of Charges to read that the Respondent was at all times referenced in the Statement of Charges and up until September 30, 1996, the holder of a Connecticut radiographer license. (Transcript pp. 4-5).

This Final Memorandum of Decision is based entirely on the record and sets forth findings of fact, conclusions of law, and an order.

### **AMENDED ALLEGATIONS**<sup>1</sup>

In paragraph 1 of the Amended Statement of Charges, the Department alleged that the Respondent was, at all times referenced in the Statement of Charges and up until September 30, 1996, the holder of Connecticut radiographer therapy license number 002807.

In paragraph 2 of the Amended Statement of Charges, the Department alleged that the Respondent and the Department finalized a Prelicensure Consent Order which required, among other things, that the Respondent's radiographer license be placed on probation for a two year period, immediately upon issuance and that one of the terms of

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<sup>1</sup> Department Exhibit 2; Transcript pp. 4-5.

probation required the Respondent to submit to observed random urine screens twice monthly.

In paragraph 3 of the Amended Statement of Charges, the Department alleged that the requirement that the Respondent undergo the above-referenced urine screens was based on the Respondent's admission in the Prelicensure Consent Order that she had been convicted in the State of Florida of felonies involving the possession of controlled substances and was ordered to participate in a drug treatment program.

In paragraph 4 of the Amended Statement of Charges, the Department alleged that on or about July 31, 1996, the Respondent tested positive for oxazepam, which was not prescribed by a licensed physician.

In paragraph 5 of the Amended Statement of Charges, the Department alleged that the above described facts constitute grounds for disciplinary action pursuant to Connecticut General Statutes §20-74cc.

### **ANSWER**

There was no answer in this case.

### **FINDINGS OF FACT**

1. The Department provided the Respondent with adequate notice of the charges against her and the scheduling of the March 13, 1997 hearing. (Department Exhibit 2).
2. The Respondent was issued Connecticut radiographer license number 002807 on October 27, 1995. Her license was immediately placed on probation pursuant to a Prelicensure Consent Order. (Department Exhibits 3 & 4).
3. The Prelicensure Consent Order, dated September 26, 1995, provided, inter alia, that the Respondent's radiographer license was placed on probation for a two year

period, immediately upon issuance. One of the terms of probation required the Respondent to submit to observed random urine screens for controlled substances, alcohol, and legend drugs, twice monthly. (Department Exhibit 4).

4. The requirement that the Respondent undergo the above-referenced urine screens was based upon the Respondent's admission in the Prelicensure Consent Order that she had been convicted in the State of Florida of felonies involving the possession of controlled substances and was ordered to participate in a drug treatment program. (Department Exhibit 4).

5. On March 26, 1992, the Respondent was granted restoration of her civil rights by the Florida Office of Executive Clemency. (Department Exhibit 5).

6. On or about July 31, 1996, the Respondent tested positive for oxazepam. The results of the initial test were confirmed by a follow-up gas chromatograph mass spectrometer test (a "GC mass spec" or "GC/MS" test). (Department Exhibit 6, Transcript pp. 11-12, 14, 16).

7. Oxazepam is a benzodiazepine, a schedule IV controlled substance. (Transcript pp. 11-12).

8. The oxazepam was not prescribed for the Respondent by a licensed physician. (Department Exhibit 7; Transcript p. 13).

9. The Respondent underwent another urine screen for controlled substances, alcohol, and legend drugs on August 13, 1996, at the request of the Department. The Respondent tested negative for all substances for this screen. (Transcript pp. 15-16).

10. On September 30, 1996, the Respondent's radiographer license lapsed. (Department Exhibit 3).

## **DISCUSSION AND CONCLUSIONS OF LAW**

Connecticut General Statutes §19a-14a provides:

Professional licenses. Investigations and disciplinary action. Any person who is the subject of an investigation pursuant to subdivision (10) or (11) of subsection (a) of section 19a-14 or disciplinary action pursuant to section 19a-17, while holding a professional license issued by the Department of Public Health or having held such a license within eighteen months of the commencement of such investigation or disciplinary action shall be considered to hold a valid license for purposes of such investigation or disciplinary action.

The Respondent held a Connecticut radiographer license from October 27, 1995 until the license lapsed on September 30, 1996. The results of the Respondent's urine screen of July 31, 1996, which showed a positive for oxazepam were reported to the Department on August 12, 1996. The Department immediately contacted the Respondent requesting information concerning the test and requesting another urine screen. The Department notified the Respondent that a compliance conference was scheduled for September 27, 1996. The Notice of Hearing, dated January 24, 1997, was sent to and received by the Respondent. The hearing was scheduled for and held on March 13, 1997. It is clear that the investigation and disciplinary action was conducted entirely within eighteen months of the Respondent holding a radiographer license issued by the Department. Consequently, disciplinary action may be taken against the Respondent's license in this case, even though the license lapsed as of September 30, 1996.

Connecticut General Statutes §20-74cc provides in pertinent part:

Disciplinary action. The department may take any action set forth in section 19a-17 if a person issued a license pursuant to section 20-74bb fails to conform to the accepted standards of the radiographer profession, including, but not limited to, the following: . . . abuse or excessive use of drugs, including alcohol, narcotics or chemicals . . . .

The Department sustained its burden of proof with regard to the allegations that the Respondent tested positive for the drug oxazepam, which was not prescribed by a license physician. Testimony concerning the Respondent's lack of a prescription for the oxazepam came from Bonnie Pinkerton, the Department's nurse consultant who monitors compliance with the Department's consent orders. Ms. Pinkerton was extremely credible while testifying to her conversations with the Respondent in August of 1996. In addition, Ms. Pinkerton sent a letter to the Respondent on August 12, 1996, asking for a note from the prescribing physician if the Respondent had had a prescription for the oxazepam. Neither the Respondent nor any physician responded to Ms. Pinkerton's written request. The Respondent, although given notice of the hearing, did not appear, nor did she submit an Answer to the Statement of Charges.

Because of the findings that the Respondent tested positive for oxazepam, a schedule IV controlled substance, which was not prescribed for the Respondent by a licensed physician, this Hearing Officer finds that the Respondent violated Connecticut General Statutes §20-74cc.

Although it is not a stated term of the probation that the Respondent not abuse nor use controlled drugs without a valid prescription, it is necessarily implied that the Respondent was expected not only to undergo observed random urine screens for controlled substances, alcohol, and legend drugs, but that she also not test positive for these substances without a valid explanation. "The law is clear that a contract includes not only what is expressly stated therein but also what is necessarily implied from the language used." *Foley v. Huntington Co.*, 42 Conn. App. 712, 730 (1996) citing *Rockwell v. New Departure Mfg. Co.*, 102 Conn. 255, 287 (1925). Accordingly, this Hearing Officer concludes that the Respondent has also violated the terms of her probation.

Connecticut General Statutes §19a-17(a)(1) provides in pertinent part:

Disciplinary action by department . . . . (a) . . . [T]he Department of Public Health with respect to professions under its jurisdiction which have no board or commission may take any of the following actions, singly or in combination, based on conduct which occurred prior or subsequent to the issuance of a permit or a license upon finding the existence of good cause: (1) Revoke a practitioner's license or permit; . . .<sup>2</sup>

The Respondent has a past conviction in the State of Florida for felonies involving the possession of controlled substances. In spite of this past conviction, the Respondent was given an opportunity to practice her profession of radiography in the State of Connecticut as long as she adhered to the Prelicensure Consent Order. In this Prelicensure Consent Order the Respondent agreed to comply with all federal and state statutes and regulations applicable to her profession and with all specified terms and conditions of her probation. During the two year probation, the Department was watching the Respondent closely with respect to the use of controlled substances. Not only was the Respondent aware of the Department's close watch of her, but she had agreed in the Prelicensure Consent Order to the random urine screens for controlled substances, alcohol, and legend drugs. By using a controlled drug, without a prescription, during her probation with the Department, the Respondent has demonstrated an unwillingness or inability to curtail her ingestion of nonprescription controlled drugs.

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<sup>2</sup> Connecticut General Statutes §19a-14(c)(13) provides in pertinent part:

Powers of department concerning regulated professions.  
 (c) No board shall exist for the following professions which are licensed or otherwise regulated by the Department of Public Health: . . . (13) Radiographer. . . . The department shall assume all powers and duties normally vested with a board in administering regulatory jurisdiction over said professions. The uniform provisions of this chapter and [chapter 376c, Radiographers and Radiological Technologists], including but not limited to . . . grounds for professional discipline: receiving and processing complaints; and disciplinary sanctions, shall apply, except as otherwise provided by law, to the professions listed in this subsection.

**ORDER**

Based on the record in this case, the above findings of fact and conclusions of law, the following is ordered in this case against Donna Harvey-Porto, Petition 960814-28-004, Radiographer License 002807: the Respondent's radiographer license is revoked.

The Respondent shall send all copies of her license to:

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

A handwritten signature in cursive script, reading "Linda J. Mead", is written over a solid horizontal line. A long, thin horizontal line extends from the right end of the signature line across the page.

Linda J. Mead, Hearing Officer  
Department of Public Health

April 29, 1997