

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Cheikh Gueye
361 Central Avenue
P.O. Box 506
Norwich, Connecticut 06360

Gareth D. Bye, Staff Attorney
Department of Public Health
410 Capitol Avenue, MS#12LEG
P.O. Box 340308
Hartford, Connecticut 06134-0308

Re: Cheikh Gueye, Lead Abatement Contractor - Petition No. 970304-052-003

REVISED ORDER RE: RECONSIDERATION

On May 5, 1998, the Memorandum of Decision in this case was rendered. On May 15, 1998, the Department of Public Health (hereinafter "the Department") filed a Motion for Reconsideration and Modification pursuant to Connecticut General Statutes §4-181a(a)(1) and/or (c). On June 23, 1998, oral arguments regarding the motion were heard. Cheikh Gueye (hereinafter "respondent") appeared without counsel. The Department was represented by Gareth Bye, Esq.

After full consideration of the oral arguments and the record, and in accordance with Connecticut General Statutes §4-181a, the Department's Motion for Reconsideration and Modification is hereby granted, and the Memorandum of Decision dated May 5, 1998 (a true and complete copy of which is attached hereto marked Attachment "A" and incorporated herein by reference), is hereby modified by replacing the Order with the following:

Order

Pursuant to the authority vested in the Commissioner by Connecticut General Statutes §§19a-17 and 20-481, this Hearing Officer orders the following in this case against Cheikh Gueye, Petition No. 970304-052-003, regarding Connecticut lead abatement contractor license number AC001027A, lead abatement planner-project designer certificate PP00162B, and lead abatement supervisor certificate number AS001163B:

1. Respondent's lead abatement license and certificates are suspended for a period of one (1) years. Such suspensions are hereby stayed.
2. Respondent's lead abatement license and certificates shall be on probation for one (1) year with the following terms and conditions:
 - a. Respondent shall provide a copy of this Memorandum of Decision to the following parties in any town that he is conducting lead abatement activity.
 - i) The Local Director of Health; and,
 - ii) The H.U.D. project coordinator, if applicable.
 - b. Respondent shall provide the Department with the name of each customer and the location where he is conducting lead abatement activity, and shall certify that he has complied with Paragraph 2a of this Order. Respondent shall provide this notice within seven (7) days of the commencement of lead abatement activity at each location.
 - c. Respondent shall obtain at his own expense the services of a licensed lead abatement contractor (hereinafter

“supervisor”), pre-approved by the Department, to conduct direct on-site inspections of respondent’s first three lead abatement projects conducted after the effective date of this Order.

(1) The supervisor shall have the right to monitor respondent’s work on the projects by any means which he or she deems necessary to determine whether respondent is complying with the controlling Federal and State statutes and regulations. Respondent shall fully cooperate with the supervisor.

(2) Respondent shall be responsible for providing written supervisor reports directly to the Department at the conclusion of each of the projects. Such supervisor’s reports shall include documentation of a description of the project and the lead abatement conducted by respondent or his employees, and whether or not respondent has complied with the controlling Federal and State statutes and regulations.

d. Respondent is assessed a civil penalty of two hundred and fifty dollars (\$250.00). This civil penalty shall be paid by certified check, payable to Treasurer, State of Connecticut, and due within six (6) months of the date of this Order.

- e. Within six (6) months of the date of this Order, respondent shall complete an Abatement Supervisor refresher course which has been approved by the Department.
 - f. The civil penalty and all notices and reports shall be sent to:
Bonnie Pinkerton Department of Public Health,
410 Capitol Avenue, MS# 12HSR
P.O. Box 340308,
Hartford, Connecticut 06134.
3. Any deviation by respondent from the conditions in Paragraph 2 above shall result in the following procedure:
- a. Respondent will be notified in writing that the term(s) have been violated provided no prior written consent for deviation from the term(s) had been given by the Department.
 - b. Such notification shall state the act(s) or omission(s) which violated those terms.
 - c. Respondent will be allowed fifteen (15) days to demonstrate to the Department that he was in compliance with the terms or to cure the violation of those terms.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, the stay shall be lifted and the suspension of his license shall be restored unless he requests a hearing as provided below.

- e. Respondent shall initiate said hearing through a written request by certified mail to the Department mailed within thirty (30) days from the date of mailing of the notification of violation of the terms of Paragraph 1.
 - f. Respondent shall be entitled to a hearing before a designee of the Commissioner if he requests the same in timely fashion.
 - g. Evidence presented to said designee of the Commissioner by either the Department or respondent shall be limited to the alleged violation(s) of the term(s) of Paragraph 1.
4. This Order shall become effective thirty days from the date of the signature on this Order Re Reconsideration.

7/23/98
Date


Stephen J. Varga Hearing Officer

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

Cheikh Gueye
361 Central Avenue
P.O. Box 506
Norwich, Connecticut 06360

Petition No. 970304-052-003

MEMORANDUM OF DECISION

Procedural Background

On December 15, 1997, the Commissioner of Public Health appointed this Hearing Officer to hear this case and issue a final order upon the conclusion of the hearing. Dept. Exh. 1-A.

On September 30, 1997, the Department of Public Health (hereinafter "the Department") issued a Statement of Charges against Cheikh Gueye (hereinafter "respondent"). The Statement of Charges sought disciplinary action pursuant to Connecticut General Statutes §§19a-17 and 20-481, regarding respondent's Connecticut lead abatement contractor license, lead abatement planner-project designer certificate, and lead abatement supervisor certificate.

Prior to the initiation of the instant charges, the Department offered respondent the opportunity to attend a compliance conference scheduled on July 8, 1997, to demonstrate compliance with all lawful requirements for the retention of his license and certificates. Dept. Exh. 1-C.

On February 4, 1998, and March 6, 1998, an administrative hearing was held to adjudicate respondent's case. The hearing was conducted in accordance with Connecticut General Statutes Chapter 54 and §19a-9-1, *et seq.* of the Regulations of Connecticut State Agencies (hereinafter "the Regulations"). Respondent appeared without counsel. The Department was represented by Gareth Bye, Esq.

Respondent did not file an Answer to the Statement of Charges, but responded orally to the allegations at the hearing. Tr. 3/6/98, pp. 5-8.

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

Allegations and Answer

1. The Department alleged that respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut lead abatement contractor license number AC001027A, lead abatement planner-project designer certificate PP00162B, and lead abatement supervisor certificate number AS001163B. Dept. Exh. 1-A. Respondent admitted this allegation. Tr. 3/6/98, pp. 5-6.
2. The Department further alleged that on or about January 1997, Connecticut Abatement and Cleaning Services, a lead abatement contractor for which respondent is the acting president and sole owner, was retained to conduct lead abatement on the exterior of a home located at 107b McKinley Avenue, Norwich, CT (hereinafter the "premises"). Dept. Exh. 1-A. Respondent admitted this allegation. Tr. 3/6/98, pp. 6-7.
3. The Department further alleged that respondent:
 - a. used unlicensed lead abatement workers during a lead abatement project on the premises; and/or,
 - b. failed to ensure that protective equipment¹ was worn in the abatement area, and removed only in designated areas. Dept. Exh. 1-A.

Respondent denied this allegation. Tr. 3/6/98, pp. 7-8.

4. The Department further alleged that the above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-481, taken in conjunction with §§19a-111-1², 19a-111-4(c)(2)(D), 19a-111-4(c)(3), 19a-111-6(d)(1)(A), and or 19a-III-6(e) of the Regulations. Respondent left the Department to its proof. Tr. 3/6/98, pp. 7-8.

¹ The Department orally amended the Statement of Charges at the hearing to strike the words "clothing and." Tr. 2/4/98, p. 19.

² The Department amended the Statement of Charges at the hearing by changing "19-111-6(e)" to "19a-111-6(e)." Tr. 2/4/98, p 6.

Findings of Fact

1. At all relevant times, respondent held Connecticut lead abatement contractor license number AC001027A, lead abatement planner-project designer certificate PP00162B, and lead abatement supervisor certificate number AS001163B. Dept. Exh. 1-A; Tr. 3/6/98, pp. 5-6.
2. On or about January of 1997, Connecticut Abatement and Cleaning Services, a lead abatement contractor for which respondent is the acting president and sole owner, was retained to conduct lead abatement on the exterior of a home located at 107b McKinley Avenue, Norwich, CT (hereinafter the "premises"). Dept. Exh. 1-A; Tr. 3/6/98, pp. 6-7.
3. On or about January 6, 1997, respondent commenced the lead abatement of the premises. Tr. 3/6/98, p. 121; Resp. Exh. C.
4. During the lead abatement of the premises, respondent employed Sene Mamadou as a lead abatement worker. Tr. 3/6/98, pp. 32, 80, 157-158.
5. At all relevant times, Sene Mamadou was not certified by the State of Connecticut as a lead abatement worker. Tr. 3/6/98, pp. 80-81, 158.
6. On or about February 22, 1997, respondent and Mr. Mamadou were present in the lead abatement area of the premises for the purpose of examining whether a rain storm had caused any damage to the abatement work. Dept. Exh. 1-J; Tr. 3/6/98, p. 129.
7. While respondent and Mr. Mamadou were present in the abatement area examining the status of the lead abatement work, they wore protective clothing, but did not wear a respirator. Tr. 3/6/98, p. 129; Dept. Exh. 1-J.
8. While in a lead abatement area, lead abatement workers must wear respirators until it can be demonstrated that the dust generated in the area does not exceed the personal exposure limits designated by the Regulations. Tr. 3/6/98, pp. 25-26, 86-87.
9. Respondent has not submitted any air samples regarding the quality of air in the lead abatement area of the premises to establish that the dust generated did not exceed the personal exposure limits. Tr. 3/6/98, p. 27.

Discussion and Conclusions of Law

Connecticut General Statutes §20-481 provides in pertinent part that:

[t]he department may take any action set forth in section 19a-17 against a person or entity issued a license or certificate pursuant to sections 20-474 to 20-484 . . . for reasons including, but not limited to, the following . . . negligent, incompetent or wrongful conduct in professional activities

Connecticut General Statutes §20-475 authorizes the Department to issue a lead abatement contractor license. Connecticut General Statutes §20-476 authorizes the Department to issue lead abatement supervisor certifications. Section 20-478-2(c) of the Regulations, as authorized by Connecticut General Statutes §20-478, authorizes the certification of a lead consultant as a lead planner-project designer.

The Department sustained its burden of proof regarding Paragraph 3a of the Statement of Charges. The evidence is uncontested that respondent employed a lead abatement worker who was not certified by the Department as required by Connecticut General Statutes §20-476. Respondent's claimed ignorance of the requirement that lead abatement workers be certified by the Department is no defense. The employment of an uncertified lead abatement worker constitutes negligent, incompetent or wrongful conduct in the course of professional activities, and thereby violates Connecticut General Statutes §20-481.

The Department sustained its burden of proof regarding Paragraph 3b of the Statement of Charges. The evidence establishes that on or about February 22, 1997, respondent and an employee were present in an abatement area without wearing respirators.

Although respondent was credible when he testified that he and Mr. Mamadou were only examining the premises, and were not conducting any active lead abatement activity, this does not negate the requirement for the use of respirators.

Section 19a-111-4(c)(3) of the Regulations provides in pertinent part that “. . . [a]ppropriate worker protection practices shall be followed as specified in section 19a-111-6 of the [Regulations].” Section 19a-111-6(d)(1)(C) of the Regulations requires the use of respirators or air monitoring according to OSHA lead standard, 29 C.F.R. 1910.1025, which has been superseded by 29 C.F.R. 1926.62³. 29 C.F.R. 1926.62(d)(2)(i) mandates respirators be used until the employer, the respondent in this case, produces an exposure assessment that establishes that the lead the workers are exposed to is not above the permissible exposure limit. Since respondent did not establish that lead exposure was not above the permissible limit, he acted negligently in the course of professional activities when he put himself and Mr. Mamadou at risk by entering an abatement zone without wearing respirators. This constitutes negligent, incompetent or wrongful conduct in the course of professional activities, and thereby violates Connecticut General Statutes §20-481.

Order

Pursuant to the authority vested in the Commissioner by Connecticut General Statutes §§19a-17 and 20-481, this Hearing Officer orders the following in this case against Cheikh Gueye, Petition No. 970304-052-003, regarding Connecticut lead abatement contractor license number AC001027A, lead abatement planner-project designer certificate PP00162B, and lead abatement supervisor certificate number AS001163B:

1. Respondent’s lead abatement license and certificates are suspended for a period of one (1) years. Such suspensions are stayed subject to the following terms and conditions:

³ Respondent was on notice that workers performing lead abatement work on the premises were required to adhere to the OSHA Lead in Construction Standard found at 29 C.F.R. 1926.62. Dept. Exh. 1-1, p. 16.

- a. Respondent shall provide a copy of this Memorandum of Decision to the following parties in any town that he is conducting lead abatement activity.
 - i) The Local Director of Health; and,
 - ii) The H.U.D. project coordinator, if applicable.

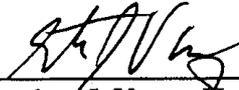
- b. Respondent shall provide the Department with the name of each customer and the location where he is conducting lead abatement activity, and shall certify that he has complied with Paragraph 1a of this Order.
 - i) Notice shall be sent to Alan Buzzetti, Supervising Environmental Sanitarian, Childhood Lead Poisoning Prevention Program, Department of Public Health, 410 Capitol Avenue, MS# 51LED, P.O. Box 340308, Hartford, Connecticut 06134.
 - ii) Respondent shall provide the notice required by this Order within seven (7) days of the commencement of lead abatement activity at each location.

- c. Respondent is assessed a civil penalty of two hundred and fifty dollars (\$250.00). This civil penalty shall be paid by certified check, payable to Treasurer, State of Connecticut, sent to the Public Health Hearing Office, MS# 12LEG, P.O. Box 340308, State of Connecticut Department of Public Health, 410 Capitol Avenue, Hartford, Connecticut 06134, and due within six (6) months of the date of this Order.

- d. Within six (6) months of the date of this Order, respondent shall complete an Abatement Supervisor refresher course which has been approved by the Department.
2. Any deviation by respondent from the conditions in Paragraph 1 above shall result in the following procedure:
 - a. Respondent will be notified in writing that the term(s) have been violated provided no prior written consent for deviation from the term(s) had been given by the Department.
 - b. Such notification shall state the act(s) or omission(s) which violated those terms.
 - c. Respondent will be allowed fifteen (15) days to demonstrate to the Department that he was in compliance with the terms or to cure the violation of those terms.
 - d. If respondent does not demonstrate compliance or cure the violation by the limited fifteen (15) day date certain contained in the notification of violation to the satisfaction of the Department, the stay shall be lifted and the suspension of his license shall be restored unless he requests a hearing as provided below.
 - e. Respondent shall initiate said hearing through a written request by certified mail to the Department mailed within thirty (30) days from the date of mailing of the notification of violation of the terms of Paragraph 1.

- f. Respondent shall be entitled to a hearing before a designee of the Commissioner if he requests the same in timely fashion.
- g. Evidence presented to said designee of the Commissioner by either the Department or respondent shall be limited to the alleged violation(s) of the term(s) of Paragraph 1.

5/5/98
Date



Stephen J. Varga, Hearing Officer