



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Patricia Thomas
Executive Director of the Board

DOCKET NO. 507-11-9432

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE §
NUMBER 667090 ISSUED TO § **OF**
BART MCCOY WILLIAMSON § **ADMINISTRATIVE HEARINGS**

ORDER NO. 1
PROBABLE CAUSE ORDER

On September 7, 2011, the Administrative Law Judge (ALJ) convened a hearing pursuant to TEX. OCC. CODE § 301.455 to determine whether there is probable cause that the practice of nursing by Bart McCoy Williamson (Respondent) constitutes a continuing and imminent threat to the public welfare, warranting the continuation of a temporary suspension of his license as instituted by the Texas Board of Nursing (Board) on August 24, 2011. The ALJ finds that probable cause exists to support the temporary suspension and orders that the suspension remain in effect pending a full evidentiary hearing.

PROCEDURAL HISTORY, NOTICE & JURISDICTION

On August 24, 2011, the Board temporarily suspended Respondent's license as a registered nurse, after determining that his Colorado license had been suspended by the Colorado Board of Nursing (Colorado Board) and that he failed to comply with a May 13, 2011 Agreed Order with the Board. Also on August 24, Board Staff sent by certified mail the notice of the September 7, 2011 probable cause hearing to Respondent's last known address, as shown in the Board's records.¹

On September 7, 2011, ALJ Pratibha J. Shenoy convened the probable cause hearing at the hearing facilities of the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Assistant General Counsel Lance R. Brenton represented Staff at the hearing. Respondent did not appear nor was he represented at the hearing.

¹ Staff Ex. 1, Respondent's computer licensure record.

The ALJ admitted Staff Exhibits Nos. 1 through 5 for jurisdictional purposes. The ALJ also admitted Staff Exhibit No. 6 under seal, to establish that Respondent is the person who holds Registered Nurse License No. 667090 and is the same person who was the subject of a May 13, 2011 Agreed Order with the Board.² The ALJ also admitted Staff's Exhibit 7, a copy of the program overview and participation requirements for nurses participating in the Texas Peer Assistance Program for Nurses (TPAPN). No witnesses testified at the probable cause hearing.

REASONS FOR DECISION

A. Allegations

On May 13, 2011, Respondent entered into an Agreed Order and agreed to enroll in TPAPN and pay a \$500 participation fee.³ In its Formal Charges, Staff alleged the following conduct as a basis for the Board's temporary suspension of Respondent's license:

On or about July 8, 2011, Respondent's licenses to practice professional and practical nursing in the State of Colorado were Suspended by the Colorado Board of Nursing.

...

On or about July 27, 2011, Respondent became non-compliant with the Agreed Order issued to him by the [Board] on May 13, 2011. Non-compliance is the result of Respondent's failure to pay a participation fee to [TPAPN]. . . . On or about July 27, 2011, Respondent was dismissed from TPAPN and referred to the Board.⁴

² Staff Ex. 1 establishes the licensure record of Bart McCoy Williamson, who holds Registered Nurse License No. 667090. Staff Ex. 3 establishes that on May 13, 2011, the Board entered into an agreed order with Bart W. Plumbley, who is described as the holder of Registered Nurse License No. 667090. Staff Ex. 6 contains a May 13, 2011 letter from Respondent to the Board, stating that he had changed his name. The letter attaches a copy of the Final Decree for Change of Name issued by the County Court of Archuleta County, Colorado, granting the request to change the name of Bart Williamson Plumbley to Bart McCoy Williamson, effective March 23, 2011.

³ Staff Ex. 3 at 15.

⁴ Staff Ex. 3 at 1.

The Suspension Order issued by the Colorado Board states that the suspension is a result of Respondent's dismissal from the Colorado Peer Assistance Services (PAS) program due to his failure to comply with reporting, drug testing, and other requirements.⁵ On March 30, 2010, Respondent submitted a urine sample that tested positive for methamphetamines. On August 19, 2010, Respondent submitted a urine sample that tested positive for alcohol consumption. Respondent failed to submit to drug testing as required on April 13, May 4, and May 12, 2011, following which the Colorado Board suspended his license.⁶

In addition, on July 27, 2011, Respondent failed to pay the \$500 fee and was dismissed from TPAPN.⁷ The May 13, 2011 Agreed Order contains the following findings of fact:

14. ...On September 5, 2008, while practicing as a professional nurse at Pagosa Mountain Hospital, [Respondent] diverted a Carpuject of Lorazepam 2 mg/ml and self-injected the Carpuject of Lorazepam while on duty.
15. In response to Finding of Fact Number Fourteen (14), Respondent states: In September of 2008, Respondent diverted medication from his place of employment for personal use. This was a onetime isolated incident, related to significant stressful incidents in his personal life. Respondent was very remorseful about the incident and immediately referred himself to the Colorado Nursing Peer Assistance Program. Respondent has been in the program since October 2008. Respondent is compliant with his rehabilitation, attending 12 step meetings, seeing a therapist and [undergoing] weekly random drug screens. Respondent was having difficulty in April 2008 and voluntarily went to a 40-day residential treatment program which he completed. His sobriety date is April 28, 2010. Respondent is attending AA/NA meetings 5-7 times a week and has completed step[s] 1-9 of the AA/NA program.⁸

⁵ Staff's notice of hearing incorporated by reference the facts set forth in the Colorado Board's Suspension Order.

⁶ Staff Ex. 3 at 6-7.

⁷ Staff Ex. 3 at 1.

⁸ Staff Ex. 3 at 14.

B. Burden of Proof and Relevant Definitions

Nurses are governed by the Texas Nursing Practice Act.⁹ Act § 301.4551 provides:

The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:

- (1) tests positive for alcohol or a prohibited drug;
- (2) refuses to comply with a board order to submit to a drug or alcohol test; or
- (3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.

As stated in Act § 301.4551, to temporarily suspend the license of a nurse, the Board must follow the provisions of Act § 301.451. This section states:

- (a) The license of a nurse shall be temporarily suspended or restricted on a determination . . . that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.
- (b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:
 - (1) institution of proceedings for a hearing before [SOAH] is initiated simultaneously with the temporary suspension or determination to restrict; and
 - (2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.
- (c) [SOAH] shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.

⁹ Tex. Occ. Code § 301.001 *et seq.* (the Act).

- (d) A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension or restriction.¹⁰

Since Respondent was not present at the probable cause hearing, resolution of this case as a default also must comport with the requirements of SOAH's default rule, found at 1 TEX. ADMIN. CODE (TAC) § 155.501. When a party fails to appear at the hearing, the factual allegations listed in the notice of hearing will be deemed admitted.¹¹

According to Staff, the Texas Legislature enacted Act § 301.4551 to allow the Board to temporarily suspend a nurse's license when the nurse has failed to participate in TPAPN and is dismissed from that program. Staff argues that Respondent's failure to participate in TPAPN – in and of itself – constitutes probable cause of a continuing or imminent threat to the public welfare. Staff contends that it need prove no other facts regarding probable cause. In the alternative, Staff argues that the factual allegations set forth in the notice of hearing are sufficient to show a continuing and imminent threat to the public welfare.

Neither the Act nor the Board's rules define the operative terms "probable cause" and "continuing and imminent threat." Therefore, lacking any statutory definition, the ALJ will use the ordinary, dictionary definition of those terms, with guidance from analogous statutes.

Most commonly used in criminal law, the "probable cause" standard requires a determination of whether a reasonable basis exists for believing a violation of the law occurred.¹² Applied in this administrative context, the ALJ finds the probable cause standard requires a determination of whether a reasonable basis exists to believe Respondent would be a continuing and imminent threat to the public welfare.

¹⁰ TEX. OCC. CODE § 301.451.

¹¹ 1 TAC § 155.501(a).

¹² Black's Law Dictionary, 7th ed. (1999).

“Continuing” has been defined as “constant, needing no renewal, and enduring,” and “imminent” means “ready to take place, near at hand, and menacingly near.”¹³ The term “threat” has been defined as “a person that might well cause harm.”¹⁴ The Texas Medical Practices Act defines a “continuing threat to the public welfare” as “a real danger to the health of a physician’s patients or to the public from the acts or omissions of the physician caused through the physician’s lack of competence, impaired status, or failure to care adequately for the physician’s patients”¹⁵

C. Analysis

The ALJ disagrees with Staff’s position that the legislature intended a nurse’s failure to participate in and dismissal from TPAPN to be sufficient, as a matter of law, to support a finding of probable cause of a continuing and imminent threat under Act § 301.455. There is no language in Act § 301.4551 to support such an interpretation. In fact, Act § 301.4551 directs the Board to temporarily suspend a license “as provided by Section 301.455.”¹⁶ This direction indicates that the legislature intended to retain the continuing and imminent threat analysis when a nurse fails to participate in TPAPN. The ALJ does not find that the grounds for a temporary suspension constitute, as a matter of law, a continuing and imminent threat to the public welfare in every circumstance.

However, the ALJ agrees with Staff that in this case, the specific factual allegations in the notice of hearing, taken as true, provide a sufficient factual basis to justify a finding of probable cause of a continuing and imminent threat to the public welfare. Respondent was dismissed from the Colorado PAS program because he failed to comply with the reporting, drug testing, and other requirements of the program. Respondent submitted urine samples that tested positive for methamphetamines and alcohol consumption, respectively. Although those samples were

¹³ Webster’s Third International Dictionary.

¹⁴ Black’s Law Dictionary, 7th ed. (1999).

¹⁵ TEX. OCC. CODE § 151.002(a)(2).

¹⁶ Act § 301.4551.

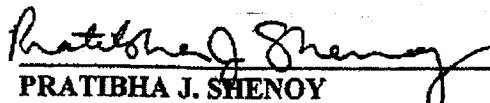
produced in early to mid-2010, Respondent failed to comply with more recent drug testing as required in April and May 2011, following which the Colorado Board suspended his license. In addition, Respondent has failed to comply with the TPAPN program as required by the May 13, 2011 Agreed Order.

These facts, taken as a whole, provide a reasonable basis for a determination that Respondent's continued practice of nursing would present a continuing and imminent threat to the public welfare. Respondent has provided positive drug samples and has failed to comply with programs that would ensure his practice was unimpaired by the use of drugs or alcohol, creating the potential for harm to others. For these reasons, the ALJ finds that the facts as alleged in the notice of hearing are sufficient to demonstrate that there is probable cause to believe that Respondent poses a current and imminent threat to the public welfare.

Based on the foregoing, **IT IS ORDERED** that the registered nurse license of Bart McCoy Williamson shall remain **SUSPENDED**, pursuant to TEX. OCC. CODE § 301.455.

IT IS FURTHER ORDERED that Staff shall confer with Respondent, if possible, and submit at least three alternative dates for the hearing on the merits. Staff shall submit these dates on or before **September 28, 2011**.¹⁷

SIGNED September 14, 2011.


PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹⁷ Under TEX. OCC. CODE § 301.455(d), a final hearing on this matter must be held no later than the 61st day after August 24, 2011, the date the Board issued its order temporarily suspending Respondent's license. The 61st day is October 24, 2011.

In the Matter of Permanent License § BEFORE THE TEXAS
Number 667090, Issued to §
BART MCCOY WILLIAMSON, Respondent § BOARD OF NURSING

ORDER OF TEMPORARY SUSPENSION

TO: Bart McCoy Williamson
110 Tucson Dr.
Temple, TX 76504

A public meeting of the Texas Board of Nursing was held on August 24, 2011 at 333 Guadalupe, Room 2-225, Austin, Texas, in which the Temporary Suspension of Permanent Registered Nurse License Number 667090, issued to BART MCCOY WILLIAMSON was considered pursuant to Section 301.4551, TEXAS OCCUPATIONS CODE. Staff of the Texas Board of Nursing appeared and presented evidence and information concerning the conduct of BART MCCOY WILLIAMSON and the provisions of Section 301.4551, TEXAS OCCUPATIONS CODE.

After review and due consideration of the evidence and information presented, the Board finds that the following charges are substantiated:

CHARGE I.

On or about July 8, 2011, Respondent's licenses to practice professional and practical nursing in the State of Colorado were Suspended by the Colorado Board of Nursing. A copy of the Order of Suspension dated July 5, 2011 is attached and incorporated, by reference, as part of this pleading.

CHARGE II.

On or about July 27, 2011, Respondent became non-compliant with the Agreed Order issued to him by the Texas Board of Nursing on May 13, 2011. Non-compliance is the result of Respondent's failure to pay a participation fee to the Texas Peer Assistance Program for Nurses (TPAPN). Stipulation Number One (1) of the Agreed Order dated May 13, 2011, states:

"(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to TPAPN and SHALL, within ninety (90) days following the date of entry of this final Order, sign and execute the TPAPN participation agreement, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars (\$500.00) payable to TPAPN."

On or about July 27, 2011, Respondent was dismissed from TPAPN and referred to the Board. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated May 13, 2011, is attached and incorporated, by reference, as part of this pleading.

After review and due consideration of the evidence and allegations presented during the open meeting regarding Respondent's fitness to practice, the Texas Board of Nursing finds that the temporary suspension of Registered Nurse License No. 667090, issued to BART MCCOY WILLIAMSON, is justified pursuant to Section 301.4551, TEXAS OCCUPATIONS CODE.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 667090, issued to BART MCCOY WILLIAMSON, to practice nursing in the State of Texas be, and the same is hereby, SUSPENDED IMMEDIATELY in accordance with Section 301.4551, TEXAS OCCUPATIONS CODE.

IT IS FURTHER ORDERED that a probable cause hearing be conducted in accordance with Section 301.455(c) not later than fourteen (14) days following the date of the entry of this order, and a final hearing on the matter be conducted in accordance with 301.455(d) not later than the 61st day following the date of the entry of this order.

Entered this 27th day of August, 20 11.

TEXAS BOARD OF NURSING

BY: Katherine A. Thomas
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR