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Texas Board of Nursing.

Kathleen O'Hanrahan
Executive Director of the Board

DOCKET NUMBER 507-11-2564

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 735866
ISSUED TO
SHAWN DENISE RUGGIERO**

**§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: SHAWN DENISE RUGGIERO
 4002 SHELLROCK DRIVE
 KILLEEN, TX 76549**

**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on July 21-22, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of Shawn Denise Ruggiero with changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein, except for Conclusion of Law Number 8, which is not adopted by the Board and is hereby re-designated as a recommendation. All proposed

findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 8

The Board declines to adopt Conclusion of Law Number 8 because it is a recommended sanction and not a proper conclusion of law. The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when she included her recommended sanction as a conclusion of law.

A recommendation for a sanction is not a proper conclusion of law. While it may be appropriate for the ALJ to recommend a sanction, it is ultimately up to the Board to determine what the appropriate sanction should be. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. Further, an agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no

pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App. - Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

Based upon adopted Finding of Fact Number 10 and Conclusions of Law Numbers 6 through 7, the Board's Disciplinary Matrix for a violation of the Occupations Code §301.452(b)(9) and (10), and the Board's rules, including 22 Tex. Admin. Code §213.33(b), (c), and (m), the Board agrees that the Respondent's license should be revoked. Thus, pursuant to applicable law, the Board re-designates Conclusion of Law Number 8 as a recommendation and adopts the ALJ's recommended sanction in this matter.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 735866, previously issued to SHAWN DENISE RUGGIERO, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

Entered this 22nd day of July, 2011.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-11-2564 (April 25, 2011).

SOAH DOCKET NO. 507-11-2564

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
CERTIFICATE NO.	§	
	§	
RN 735866	§	OF
	§	
ISSUED TO SHAWN D. RUGGIERO	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) sought disciplinary action against Shawn D. Ruggiero (Respondent) for an alleged violation of the Nursing Practice Act¹ and the Board rules. The disciplinary action is based on an allegation that, while employed as a Registered Nurse (RN) at a healthcare facility, Respondent produced a specimen for a random drug screen that resulted in a positive test result for Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Diphenhydramine, Fentanyl, Meperidine, and Meperidine Metabolites. Staff alleges that Respondent engaged in unprofessional conduct involving the intemperate use of drugs, which could have endangered or injured a patient. Based on the allegation, Staff sought revocation of Respondent's license.

Respondent failed to appear at the hearing. Therefore, the Administrative Law Judge (ALJ) granted Staff's motion for default and recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on April 13, 2011, before ALJ Penny A. Wilkov, at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. John F. Legris, Assistant General Counsel, appeared for Staff. Neither Respondent nor anyone acting on her behalf appeared at the hearing.

¹ TEX. OCC. CODE ch. 301.

Staff introduced various documents in evidence, establishing that Staff had sent Respondent proper and timely notice of the hearing and of the allegations against her. The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law. Staff made an oral motion for default due to Respondent's failure to attend the hearing. The motion was granted, resulting in all of Staff's allegations contained in the Formal Charges being deemed admitted, pursuant to 1 TEX. ADMIN. CODE § 155.501.

Staff also presented its expert witness, nursing practice consultant Denise Benbow, to testify regarding the appropriate sanction. In Ms. Benbow's opinion, revocation of Respondent's license is justified. Ms. Benbow noted that the violation in this case occurred while Respondent was on duty, which could have resulted in poor judgment and potential danger to patients.

II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law, the ALJ recommends that the Board revoke Respondent's nursing license.

III. FINDINGS OF FACT

1. Shawn Denise Ruggiero (Respondent) is licensed as a registered nurse, and holds License No. 735866 issued by the Texas Board of Nursing (Board).
2. On May 13, 2008, the Board's staff (Staff) notified Respondent that it was initiating an investigation of a charge against her.
3. On June 6, 2008, Respondent wrote a letter to the Board admitting that the charge was true and requesting referral to the Texas Peer Assistance Program for Nurses.
4. On October 20, 2010, Staff notified Respondent that Formal Charges had been filed against her.
5. On January 21, 2011, Staff mailed its Notice of Hearing by certified mail, return receipt requested, to Respondent's address of record with the Board. The notice was returned unclaimed.
6. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain

statement of the matters asserted. The Notice of Hearing stated the hearing would convene on April 13, 2011.

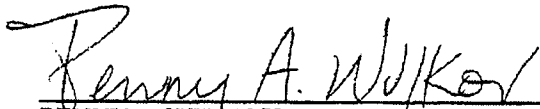
7. The Notice of Hearing contained the following language in capital letters in at least 12-point boldface type: "FAILURE TO APPEAR AT THE HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT."
8. The hearing convened on April 13, 2011, before ALJ Penny A. Wilkov, at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. John F. Legris, Assistant General Counsel, appeared for Staff. Neither Respondent nor anyone acting on her behalf appeared at the hearing.
9. Because Respondent did not appear and was not represented at the hearing, Staff's oral motion for default was granted.
10. On or about March 5, 2008, while employed as a staff nurse with Providence Health Center, Waco, Texas, Respondent engaged in the intemperate use of drugs in that she produced a specimen for a drug screen that resulted positive for Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Diphenhydramine, Fentanyl, Meperidine, and Meperidine Metabolites. The use of drugs by a nurse while subject to call or duty could impair the nurse's ability to recognize subtle signs, symptoms, or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter. TEX. OCC. CODE (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Notice of hearing on the merits was provided to Respondent as required. TEX. GOV'T CODE §§ 2001.051 and 2001.052; 22 TEX. ADMIN. CODE § 213.10.
4. The Board had the burden of proving the case by a preponderance of the evidence.

5. The facts alleged in Staff's Formal Charges, which were attached to and incorporated by reference in the Notice of Hearing, were properly deemed admitted due to Respondent's failure to appear at the hearing. 1 TEX. ADMIN. CODE § 155.501.
6. Possession of Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Fentanyl, Meperidine, or Meperidine Metabolites is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act) unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.
7. Respondent is subject to discipline under Code § 301.452(b)(9) and (10), and 22 TEX. ADMIN. CODE § 217.12(5)(10)(A),(D), and 11(B).
8. The Board should revoke Respondent's nursing license.

SIGNED April 25, 2011.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Permanent License
Number 735866, Issued to
SHAWN DENISE RUGGIERO, Respondent

§ BEFORE THE TEXAS
§
§ BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, SHAWN DENISE RUGGIERO, is a Registered Nurse holding license number 735866, which is in Delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about March 5, 2008, while employed as a Registered Nurse with Providence Health Center, Waco, Texas, Respondent produced a specimen for a random drug screen requested by Providence Health Center, which resulted positive for Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Diphenhydramine, Fentanyl, Meperidine, and Meperidine Metabolites. Possession of Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Fentanyl, and Meperidine is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Morphine, Hydrocodone, Hydromorphone, Propoxyphene, Fentanyl, and Meperidine by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(9)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(5)(10)(A),(D)&(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

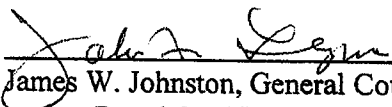
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, which can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

Filed this 15th day of October, 2010.

TEXAS BOARD OF NURSING


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