

DOCKET NUMBER 507-14-1613

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBERS 510466 & 63561
ISSUED TO
ROBERT E. WITTMAYER

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: ROBERT E. WITTMAYER
130 DEER CROSSING WAY
AZLE, TX 76020

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 17-18, 2014, the Texas Board of Nursing (Board) considered the following items: (1) Order Number 2, *Dismissing Case*, issued by the ALJ in the above cited matter; (2) Staff's recommendation that the Board revoke the Respondent's registered and vocational nursing licenses by default; and (3) Respondent's recommendation to the Board regarding the above cited matter, if any.

On February 25, 2014, the ALJ convened a hearing on the merits in this matter. Staff of the Board was present for the hearing. However, the Respondent was not present at the hearing, and no one appeared on his behalf. During the hearing on February 25, 2014, Staff introduced evidence into the record demonstrating that Respondent had been sent a Notice of Final Hearing by first class certified mail return receipt requested to his last known address of record maintained by the Board in accordance with 22 Tex. Admin. Code §213.10(a). The ALJ found that Staff's notice was adequate and issued Order No. 2, granting Staff's Motion for Default and dismissing the case from the docket of SOAH and remanding it to the Board for informal disposition on a default basis in accordance with the Government Code §2001.056.

The Board, after review and due consideration of Order Number 2, *Dismissing Case*, issued by the ALJ in the above cited matter, finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with the Government Code §2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Occupations Code Chapter 301 (Nursing Practice Act) for retention of Respondent's licenses to practice professional and vocational nursing in the State of Texas. The Board further finds that the Formal Charges were properly initiated and filed in accordance with the Occupations Code §301.458. The Board further finds that proper and timely notice regarding the violations alleged in the Formal Charges was given to Respondent in accordance with the requirements of the Government Code §2001.051 and §2001.052 and 1 Tex. Admin. Code §155.501. The Board further finds that the Respondent failed to appear in accordance with 22 Tex. Admin. Code Chapter 213 and 1 Tex. Admin. Code §155.501. As a result of the Respondent's failure to



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.
Sarah G. Ramos
Executive Director of the Board

appear, the Board has determined that the factual allegations listed in the Formal Charges are to be deemed admitted by default and the Board is authorized to enter a default order against the Respondent pursuant to the Government Code §2001.056 and 22 Tex. Admin. Code §213.22. Further, the Board has determined that it is entitled to revoke the Respondent's registered and vocational nursing licenses pursuant to 22 Tex. Admin. Code §213.33(m).

Therefore, the Board hereby adopts the factual allegations, which have been deemed admitted, and the conclusions of law contained in the Formal Charges, which are attached hereto and incorporated herein by reference for all purposes, and Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing in accordance with the Government Code Chapter 2001 and 22 Tex. Admin. Code §213.23(l), as applicable. All parties have a right to judicial review of this Order. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.


IT IS, THEREFORE, ORDERED THAT Permanent Certificate Numbers 510466 & 63561, previously issued to ROBERT E. WITTMAYER, to practice nursing in the State of Texas be, and the same are 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.

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 17th day of July, 2014.

TEXAS BOARD OF NURSING


KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Formal Charges

TEXAS BOARD OF NURSING

In the Matter of Permanent

Certificate Number 510466 & 63561

Issued to ROBERT E. WITTMAYER

NOTICE OF FINAL HEARING

SOAH Docket Number 507-14-1613

Respondent: Robert E. Wittmayer
130 Deer Crossing Way
Azle, TX 76020

In accordance with Section 2001.051 et seq., Texas Government Code, you are hereby notified that a hearing will be held before an Administrative Law Judge (ALJ), beginning on the 25TH day of February, 2014, at 9:00 a.m., and continuing day to day, as ordered by the ALJ, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15th Street, 4th Floor, Austin, Texas 78701, regarding Formal Charges filed and hereby served upon you by the Texas Board of Nursing. The Formal Charges are attached and incorporated by reference as a part of this notice.

The hearing is to be held under the legal authority and jurisdiction of the Administrative Procedures Act, Texas Government Code §2001 et seq.; Title I Part VII Texas Administrative Code Chapter 155; the Nursing Practice Act, Texas Occupations Code §301.451 through §301.555; and the Board of Nursing Rule 213 at 22 Texas Administrative Code.

The particular sections of statutes and rules involved in determining the charges are stated in the attached Formal Charges in connection to the facts or conduct alleged.

Pursuant to 22 TEX. ADMIN. CODE §213.22, you are required to enter an appearance in this proceeding by filing a written answer or other responsive pleading with the State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas, 78711-3025, with a copy to the staff (General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701). **FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR OTHER RESPONSIVE PLEADING TO THE FORMAL CHARGES WITHIN TWENTY (20) DAYS OF THE DATE THIS NOTICE WAS MAILED, SHALL ENTITLE THE STAFF TO A CONTINUANCE AT THE TIME OF THE HEARING. "Staff" is defined by 22 TEX. ADMIN. CODE §213.1(41).** Continuances are set by the Administrative Law Judge.

You have the right to appear at this hearing and to have legal representation at the hearing at your own expense. **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.**

If it is determined that the Formal Charges are substantiated, then any prior disciplinary action that has been taken against your license will be considered when determining the appropriate sanction for these violation(s).

Issued, dated, and mailed this the 6th day of February, 2014

TEXAS BOARD OF NURSING



By:



Katherine A. Thomas, MN, RN, FAAN
Executive Director

In the Matter of ,
Permanent Registered Nurse
License Number 510466 &
Permanent Vocational Nurse
License Number 63561
Issued to ROBERT E. WITTMAYER,
Respondent

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BEFORE THE TEXAS

BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, ROBERT E. WITTMAYER, is a Registered Nurse holding License Number 510466 which is in current status at the time of this pleading, and is a Vocational Nurse holding License Number 63561, 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 November 19, 2013, Respondent became non-compliant with the Agreed Order issued to him by the Texas Board of Nursing on September 9, 2011, which required him to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). Non-compliance is the result of Respondent's failure to complete the work requirement as required by TPAPN upon execution of the TPAPN participation agreement. Respondent's case was closed with TPAPN on or about November 19, 2013, and referred to the Board for noncompliance.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(3)&(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and 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.texas.gov.

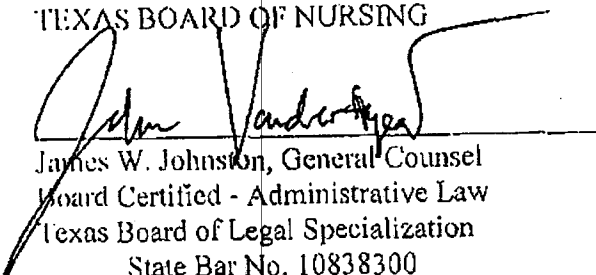
NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, which can be found at the Board's website, www.bon.texas.gov.

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

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order dated September 9, 2011.

Filed this 6th day of January, 2014.

TEXAS BOARD OF NURSING



James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

Jena Abel, Assistant General Counsel
State Bar No. 24036103

Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924

John R. Griffith, Assistant General Counsel
State Bar No. 24079751

Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847

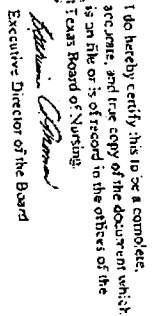
John F. Legris, Assistant General Counsel
State Bar No. 00785533

John Vanderford, Assistant General Counsel
State Bar No. 24086670

333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6811
F: (512) 305-8101 or (512) 305-7401

Attachments: Order of the Board dated September 9, 2011

2013 11 19

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AGREED
ORDER

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on July 27, 2011, by Katherine A. Thomas, MN, RN, Executive Director.

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas. Respondent's license to practice vocational nursing in the State of Texas is currently in delinquent status.
4. Respondent received a Certificate in Vocational Nursing from Harris Hospital School of Vocational Nursing, Fort Worth, Texas, on January 10, 1975. Respondent was licensed to practice vocational nursing in the State of Texas on May 19, 1975. Respondent received an Associate Degree in Nursing from Tarrant County Junior College, Fort Worth, Texas, on May 1, 1983. Respondent was licensed to practice professional nursing in the State of Texas on August 30, 1983.

5. Respondent's complete professional and vocational nursing employment history includes:

01/1975-08/1976	LVN	Harris Methodist Hospital Fort Worth, Texas
08/1976-08/1978	LVN	John Peter Smith Hospital Fort Worth, Texas
08/1978-08/1983	LVN	Northeast Community Hospital Bedford, Texas
08/1983-05/1996	RN	Northeast Community Hospital Bedford, Texas
06/1996-06/1999	RN	Grand Prairie Medical Center Grand Prairie, Texas
06/1999-11/2009	RN	Baylor All Saints Medical Center Fort Worth, Texas
12/2009	Unknown	
01/10-Present	RN	Weatherford Regional Medical Center Weatherford, Texas

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with Baylor All Saints Medical Center, Fort Worth, Texas, and had been in this position for approximately ten (10) years and five (5) months.
7. On or about November 12, 2009, while employed as a Registered Nurse with Baylor All Saints Medical Center, Fort Worth, Texas, Respondent engaged in the intemperate use of Fentanyl in that he submitted a specimen for a drug screen that produced a positive result for Fentanyl (3500 ng/mL). Unlawful Possession of Fentanyl is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act). The use of Fentanyl 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 conditions, 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.

8. In response to Finding of Fact Number Seven (7), Respondent states after receiving the results of the screen, he met with his manager where he stated that the only way he could have been exposed to Fentanyl was by hanging a sedation drip. Respondent stated when he pulled the spike out of the old bag that 5-7cc's of liquid went onto his hand and forearm while he was spiking the new bag and resetting the IV infusion pump. Respondent states, he then left the room and applied the Alcar alcohol foam to his hands and arm bilaterally. Additionally, Respondent states after research he confirmed with Pharmacists that if accidental contact is made with Fentanyl via the skin to wash thoroughly with water, not soap or alcohol, as it may enhance the drugs ability to penetrate the skin.
9. On or about March 23, 2011, Respondent sat for a Forensic Psychological Evaluation with a Chemical Dependency Component with Emily Fallis, Ph.D., Licensed Psychologist, Fort Worth, Texas. Dr. Fallis summarized that Mr. Wittmayer demonstrated no evidence of current psychopathology through interview and observation. Dr. Fallis adds that he has a history of substance abuse, which he apparently overcame with treatment and personal strengths. Dr. Fallis opines that Mr. Wittmayer should have no difficulty avoiding behaviors which the Board of Nursing has identified as constituting unprofessional conduct and in particular, Dr. Fallis states she found little evidence that he may abuse substances either while on duty as a nurse or in other contexts. Dr. Fallis concludes that Mr. Wittmayer is unlikely to have difficulty behaving consistently in accordance with the requirements of Rules 213.27 and 213.29 at 22 Texas Administrative Code, as well as the minimum standards set by the Boards Rules and generally accepted nursing standards.
10. On or about July 26, 2011, while employed as a Registered Nurse with Weatherford Regional Medical Center, Weatherford, Texas, Respondent admitted to staff of the Texas Board of Nursing that due to the stress of the investigation he had relapsed on Hydromorphone seven (7) to ten (10) days ago. Respondent's conduct could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
11. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
12. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
13. Respondent's conduct described in Findings of Fact Number Seven (7) through Ten (10) resulted from Respondent's dependency on chemicals.
14. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(9)&(10), Texas Occupations Code and 22 TEX. ADMIN. CODE §217.12(1)(A)&(B),(4),(5),(10)(A)&(D) and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 510466 and Vocational Nurse License Number 63561, heretofore issued to ROBERT E. WITTMAYER, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(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.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term and SHALL keep his license(s) to practice nursing in the State of Texas current.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license(s) is/are encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

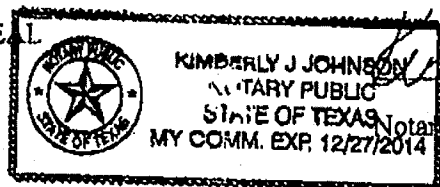
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Texas Board of Nursing, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 2 day of SEPT, 2011.

Robert E. Wittmayer
ROBERT E. WITTMAYER, Respondent

Sworn to and subscribed before me this 2 day of September, 2011.

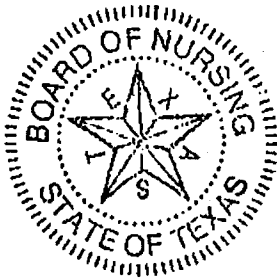
SEAL



Kimberly J. Johnson
Notary Public in and for the State of Texas

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 2nd day of September, 20 11, by ROBERT E. WITTMAYER, Registered Nurse License Number 510466 and Vocational Nurse License Number 63561, and said Order is final.

Entered and effective this 9th day of September, 20 11.



Katherine A. Thomas
Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

SOAH DOCKET NO. 507-14-1613

TEXAS BOARD OF NURSING,
Petitioner

v.

ROBERT E. WITTMAYER,
Respondent

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BEFORE THE STATE OFFICE

OF

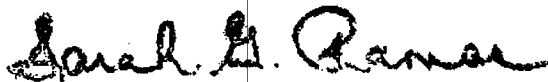
ADMINISTRATIVE HEARINGS

ORDER NO. 2
DISMISSING CASE

The hearing for this case convened on February 25, 2014, before Administrative Law Judge (ALJ) Sarah G. Ramos at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Assistant General Counsel John Vanderford appeared on behalf of the staff (Staff) the Texas Board of Nursing (Board). Respondent Robert E. Wittmayer did not appear and was not represented at the hearing. Staff presented evidence that Mr. Wittmayer was properly sent the Notice of Hearing at his address of record.¹ Therefore, the ALJ found notice was adequate and granted Staff's oral motion for default.

As a result, this case is **DISMISSED** from the State Office of Administrative Hearings docket on a default basis in accordance with 1 Texas Administrative Code § 155.501(d).² The file is being returned to the Board for informal disposition in accordance with Texas Government Code § 2001.056.

SIGNED March 11, 2014.



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ Staff exhibits 1, 2, 3, 4, and 4a were admitted into evidence.

² The ALJ reviewed only the adequacy of the notice and not the sufficiency of the factual allegations.