



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.
William P. ...
Executive Director of the Board

IN THE MATTER OF § BEFORE THE
§ STATE OFFICE OF
§ ADMINISTRATIVE HEARINGS
GAIL FIELDS, L.V.N. §

PROPOSAL FOR DECISION

The staff of the Board of Vocational Nurse Examiners initiated this action seeking disciplinary action against a licensee for violating an Agreed Board Order. The staff requested that the Respondent's license be suspended until a required course is successfully completed. This proposal finds that the subject license should be suspended as requested by the staff.

I.

PROCEDURAL HISTORY

On January 8, 1993, the staff of the Board of Vocational Nurse Examiners (the Board) filed a sworn Complaint against GAIL FIELDS (Respondent) alleging that the Respondent violated the terms of an Agreed Order issued by the Board. The Board alleged that the Respondent's actions were in violation of TEX. REV. CIV. STAT. ANN. art. 4528c, §10, which warranted disciplinary action against the Respondent's license. The hearing set for April 19, 1993, was continued to July 12, 1993, at the Respondent's request.

The hearing commenced on July 12, 1993, in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas. After the taking of evidence, the hearing concluded the same day. The Board's staff was represented by Deborah Leach, Assistant Attorney General of Texas. GAIL FIELDS appeared and represented herself at the hearing.

II.

JURISDICTION AND NOTICE

The Board of Vocational Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4528c, §10. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13f.

Notice of the Board's intention to institute disciplinary action, dated August 10, 1992, was properly addressed and sent by certified mail, return receipt requested, to the Respondent, 12227 Quail Drive, Apt. 203, Balch Spring, Texas 75180, her address of record at the time, pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13a, §18(c). The notice letter was received and signed for by the Respondent on August 12, 1992. On September 25, 1992, a copy of the complaint against the Respondent was mailed by certified mail, return receipt requested, to the Respondent at the same address. The Post Office returned the complaint letter to the Board marked, "Unclaimed." On January 8, 1993, a second copy of the complaint against the Respondent was mailed by certified mail, return receipt requested, to the Respondent at the same address. The Post Office returned the second complaint letter to the Board marked, "Unclaimed." Notice of the hearing, dated March 22, 1993, was properly addressed and sent by certified mail, return receipt requested, to the Respondent at Route 3, Box 119-A-14, Trinity, Texas 75862, pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13a, §13. The Respondent's agent received the notice letter. Subsequent to the granting of a continuance at the Respondent's request, a second notice of the hearing, dated June 18, 1993, was properly addressed and sent by certified mail to GAIL FIELDS at 10501 Steppington Drive, #127, Dallas, Texas 75230. The Respondent appeared for the hearing.

III.

DISCUSSION

On November 19, 1991, the Board endorsed an Agreed Board Order in which the Respondent's license to practice vocational nursing in the State of Texas was suspended, the suspension was stayed and the Respondent was placed on probation for a period of six months. The Order contained stipulations which required that the Respondent successfully complete a nursing program course encompassing the areas of Pharmacology and Documentation and submit proof of course completion to the Board before the end of the period of probation. On October 29, 1991, the Respondent signed the Agreed Order and accepted its conditions.

On February 5, 1992, the Board received a letter from the Respondent advising that she was enrolled in the required course. On May 22, 1992, the Board received a letter from the Respondent advising that she had completed the course and was awaiting her grade. On August 3, 1992, the Board received a letter from the Respondent advising that she had not received a passing grade in the required course.

At hearing the Respondent asked that she be given another opportunity to take and pass the required course.

The Board has authority to take disciplinary action against its licensees under TEX. REV. CIV. STAT. ANN. art. 4528c §10(a) which states, in part, "(a) The Board may ... may suspend or may revoke the license of any practitioner of vocational nursing for ... (1) violation of this Act or of any rule, regulation, or order issued under this Act..."

As shown by the evidence, the Respondent not only took the course as required, she attempted to keep the Board advised of her progress. Unfortunately she failed her final exam. As a consequence the Respondent is in violation of the Agreed Order which required her to successfully complete the course by May 19, 1992. Considering the effort expended by the Respondent, the Administrative Law Judge agrees with the staff in recommending that the Respondent's license to practice vocational nursing in the State of Texas be suspended pending successful course completion.

The Board has authority suspend the Respondent's license and to require that she successfully complete the specified course prior to reinstatement of her license. Such authority is set out at 22 TAC §239.41(d) which states, "In taking action to revoke or suspend a license, the board may, in its discretion, specify the terms and conditions upon which reinstatement shall be considered."

IV.

PROPOSED FINDINGS OF FACT

1. GAIL FIELDS (the Respondent), a vocational nurse licensed by the State of Texas, holds license number 119368.
2. A sworn complaint against the Respondent was filed with the Board of Vocational Nurse Examiners for the State of Texas.
3. Proper and timely notice of the hearing and of the complaint was mailed to the Respondent by certified mail sent to her record address.
4. The Respondent was present at the hearing.
5. The Respondent was not represented by counsel at the hearing.
6. On November 19, 1991, the Board endorsed an Agreed Board Order in which the Respondent's license to practice vocational nursing in the State of Texas was suspended, the suspension was stayed and the Respondent was placed on probation for a period of six months. The Order contained stipulations which required that the Respondent successfully complete a nursing program course

encompassing the areas of Pharmacology and Documentation and submit proof of course completion to the Board before the end of the period of probation.

7. On October 29, 1991, the Respondent signed the Agreed Order and accepted its conditions.
8. On February 5, 1992, the Board received a letter from the Respondent advising that she was enrolled in the required course.
9. On May 22, 1992, the Board received a letter from the Respondent advising that she had completed the course and was awaiting her grade.
10. On August 3, 1992, the Board received a letter from the Respondent advising that she had not received a passing grade in the required course.

V.

PROPOSED CONCLUSIONS OF LAW

1. The Board of Vocational Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4528c, §10.
2. A sworn complaint against the Respondent was filed with the Board of Vocational Nurse Examiners for the State of Texas in accordance with TEX. REV. CIV. STAT. ANN. art. 4528c, §10(d).
3. Service of proper and timely notice of the hearing and of the complaint was effected upon the Respondent pursuant to TEX. REV. CIV. STAT. ANN. art. 6252-13a and 22 TAC §239.23.
4. The Board has authority to take disciplinary action against its licensees under TEX. REV. CIV. STAT. ANN. art. 4528c §10(a) which states, in part, "(a) The Board may ... suspend or may revoke the license of any practitioner of vocational nursing for ... (1) violation of this Act or of any rule, regulation, or order issued under this Act..."
5. Based upon Findings of Fact Nos. 6 - 10, the Respondent has violated the terms of an Order issued by the Board of Vocational Nurse Examiners which Order was issued under the authority of TEX. REV. CIV. STAT. ANN. art. 4528c.

6. The Respondent's actions constitute a violation of TEX. REV. CIV. STAT. ANN. art. 4528c, §10(a)(1) and warrant disciplinary action against her license pursuant to that statute.
7. The Board has provided by rule, found at 22 TAC §239.41(d), "In taking action to revoke or suspend a license, the board may, in its discretion, specify the terms and conditions upon which reinstatement shall be considered."

Signed and entered this 30th day of July, 1993.



Earl A. Corbitt
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF	§	BEFORE THE BOARD OF
	§	
PERMANENT LICENSE	§	VOCATIONAL NURSE EXAMINERS
NUMBER 119368	§	
	§	IN AND FOR THE
ISSUED TO	§	
GAIL FIELDS, LVN	§	STATE OF TEXAS

ORDER OF THE BOARD

TO: GAIL FIELDS
10501 Steppington Drive #127
Dallas, Texas 75230

During open meeting at Austin, Texas, the Board of Vocational Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Vocational Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that License Number 119368 heretofore issued to GAIL FIELDS to practice vocational nursing in the State of Texas be, and the same is hereby, suspended until such time as GAIL FIELDS successfully completes a nursing course encompassing the areas of study of Pharmacology and Documentation, and submits documentation of successful course completion to the Board office.

Passed and approved at the regular meeting of the Board of Vocational Nurse Examiners in and for the State of Texas at Austin, Texas, on the 14th day of September, 1993.

Entered this 14th day of September, 1993.

Doris A. Lasker

Agatha Lewis

Opal Robinson

Jane Sifford W.N.

Betty Fox McNamee

Cliff Leford

Mar Speer

Melba Lee-Hess, Sr.

Carmen Dault

Virginia M. Bauman

Sandra Knight W.N.