



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 Ruth Harmon
Executive Director of the Board

DOCKET NUMBER 507-12-4866

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 539411
ISSUED TO
PATRICIA RUTH HARMON**

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

OPINION AND ORDER OF THE BOARD

**TO: PATRICIA RUTH HARMON
2313 AVENUE E
HONDO, TX 78861**

**STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on October 18-19, 2012, 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 Patricia Ruth Harmon 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. Staff filed exceptions to the PFD on July 20, 2012. The Respondent did not file a response or exceptions to the PFD. On September 6, 2012, the ALJ issued his final letter ruling, in which he added Finding of Fact Number 15A and amended Conclusions of Law Numbers 4 and 5. He did not make any further changes to the PFD nor did he modify his recommended sanction.

The Board has authority to review and modify the PFD in accordance with the Government Code §2001.058(e). The Board, after review and due consideration of the PFD, Staff's recommendations, and the presentation by the Respondent during the open meeting, if any, has determined that Findings of Fact Numbers 7 and 11 contain typographical/technical errors. As such, the Board finds that the PFD should be MODIFIED under the authority of §2001.058(e)(3) to correct these typographical/technical errors as stated below.

Amended Finding of Fact Number 7

7. While on the way to Medina, Respondent talked with her daughter's doctor, Dr. Rowland, who told her the medications he recommended.

Amended Finding of Fact Number 11

11. Once Respondent arrived at University, she was informed that physicians would take no action to stop the contractions. She attempted to talk to the doctors regarding their decision, but was unsuccessful in changing their minds. As a result, and because of her fear that if the contractions were permitted to continue, her daughter and grandchild might die, she administered the Terbutaline.

IT IS, THEREFORE, ORDERED THAT the PFD signed on July 3, 2012 is hereby MODIFIED under the authority of the Government Code §2001.058(e)(3) in order to correct the typographical/technical errors in Findings of Fact Numbers 7 and 11. FURTHER, it is ordered that Findings of Fact Numbers 7 and 11 are hereby AMENDED and ADOPTED as stated above.

IT IS FURTHER ORDERED THAT Findings of Fact Numbers 1 through 6, 8 through 10, and 12 through 16 and Conclusions of Law Numbers 1 through 5 contained in the PFD, including new Finding of Fact Number 15A and Conclusions of Law Numbers 4 and 5, as added and amended by the ALJ in his final letter ruling of September 6, 2012, are ADOPTED without modification. Conclusion of Law Number 6 is 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.

Recommendation for Sanction

Although 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 or conclusions of law¹, the Board agrees with the ALJ's generalized conclusion that the appropriate sanction in this matter is a probated suspension.

It is clear from the adopted Findings of Fact and Conclusions of Law that the Respondent committed several violations of the Nursing Practice Act and Board rules. First, the Respondent violated the professional boundaries of the nurse/client relationship and practiced nursing while she was not on duty or assigned to provide nursing care to her daughter, who was a patient at Medina Community Hospital and University Hospital². Second, the Respondent misappropriated a medication from Medina Community Hospital

¹ 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. 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. As such, 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 choice of penalty is vested in the agency, not in the courts. 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.).

² See adopted Findings of Fact Numbers 6 - 8 and 11-14.

and administered it to her daughter³. The Respondent also contradicted a physician's order and substituted her own judgment for that of the physician⁴. This conduct is serious in nature. The Board is concerned about nurses who provide nursing care to family members. In such situations, there is a risk that a nurse may lose his/her objectivity and make decisions that place their family member in harm's way. Based upon the adopted Findings of Fact and Conclusions of Law⁵, it appears that the Respondent's conduct may have posed a risk of harm to her daughter. Third, the Respondent provided false and misleading information on an application for employment⁶. This conduct reflects on the Respondent's integrity, honesty, and professional character and raises serious questions about the Respondent's ability to determine right from wrong⁷. Finally, the Respondent submitted a pre-employment drug screen that tested positive for marijuana⁸. A nurse must be able to recognize subtle signs, symptoms, and changes in a patient's condition. The use of controlled substances or illegal drugs may impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing patients in potential danger. The Respondent's conduct raises questions about her ability to render safe nursing care.

The Board has also considered the mitigating factors noted by the ALJ. First, the ALJ noted that the nursing care rendered by the Respondent to her daughter was motivated by the Respondent's concern for her daughter and her granddaughter. Although this does not excuse the Respondent's actions, the ALJ placed the Respondent's actions in the category of "one of a kind"⁹. Second, the ALJ noted the Respondent's prior good nursing record¹⁰. Finally, the ALJ found that the Respondent did not knowingly engage in the use of marijuana, despite the fact that she produced a positive specimen for marijuana¹¹.

After reviewing the aggravating and mitigating factors in this matter, the Board finds that, pursuant to the Board's Disciplinary Matrix¹², and the Board's rules, including 22 Tex. Admin. Code §213.33(e) and (f), the Respondent's conduct warrants a probated suspension for two years, with probationary conditions to include remedial education

³ See adopted Findings of Fact Numbers 10 and 11.

⁴ See page 3 of the PFD.

⁵ Specifically, see adopted Findings of Fact Numbers 8, 10, 11, 12, and 14.

⁶ See adopted Finding of Fact Number 15.

⁷ See 22 Tex. Admin. Code §213.27.

⁸ See adopted Finding of Fact Number 15A.

⁹ See page 4 of the PFD.

¹⁰ See page 5 of the PFD.

¹¹ See adopted Finding of Fact Number 16.

¹² The Board finds that the Respondent's conduct warrants a third tier, sanction level I sanction for her violation of §301.452(b)(9); a second tier, sanction level II sanction for her violation of §301.452(b)(10); and a second tier, sanction level II sanction for her violation of §301.452(b)(13). Second tier, sanction level II sanctions are more serious in nature and warrant licensure suspension.

courses¹³, a fine¹⁴, employment restrictions, supervised practice, and random drug screening.

IT IS THEREFORE ORDERED, that Registered Nurse License Number 539411, previously issued to PATRICIA RUTH HARMON to practice nursing in Texas is hereby SUSPENDED for a period of two (2) years, with the suspension STAYED and Respondent is hereby placed on PROBATION for two (2) years with the following terms of probation:

IT IS FURTHER ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

IT IS FURTHER 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 ORDERED that while Respondent's license(s) is/are encumbered by this order, the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact 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.

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§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.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses*

¹³ See footnote 1, page 5 of the PFD, where the ALJ states that, "If the ALJ's assumption is incorrect, the ALJ finds that the continuing education requirements recommended by Staff are reasonable and appropriate."

¹⁴ See 22 Tex. Admin. Code §213.32(5)(G).

may be found at the following Board website address:
<http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. Board-approved courses may be found at the following Board website address:
<http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>.

(4) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in "Respecting Professional Boundaries," a 3.9 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. Information regarding Board-approved courses may be found at the following Board website address: <http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>.

(5) RESPONDENT SHALL pay a monetary fine in the amount of two hundred and fifty dollars (\$250). RESPONDENT SHALL pay this fine within forty five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER ORDERED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL TWENTY FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(6) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(7) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(8) For the first year of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(10) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for two (2) year(s) of employment as a nurse.

(11) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.**

(12) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the probation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to 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.


IT IS FURTHER ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

CONTINUED ON NEXT PAGE

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

Entered this 19th day of October, 2012.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN, FAAN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-12-4866 (July 3, 2012).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 3, 2012

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

VIA INTER-AGENCY

RE: Docket No. 507-12-4866; In The Matter of Permanent Certificate
Number 539411 Issued To Patricia Ruth Harmon

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Steven D. Arnold
Administrative Law Judge

SDALs

Enclosures

XC: Lance R. Brenton, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701
- VIA INTER-AGENCY
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - (with 1 CD;
Certified Evidentiary Record) - VIA INTER-AGENCY
Patricia Harmon, 2313 Avenue E, Hondo, TX 78861 - VIA REGULAR MAIL

300 W. 15th Street, Suite 502, Austin, Texas 78701 / P.O. Box 13025, Austin, Texas 78711-3025
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SOAH DOCKET NO. 507-12-4866

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
CERTIFICATE NO. 539411 ISSUED TO §
§
§ OF
PATRICIA RUTH HARMON, §
Respondent § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Board) seeks to impose sanctions on Patricia Ruth Harmon (Respondent), holder of Permanent Certificate No. 539411, on the basis that Respondent violated numerous provisions of the Nursing Practice Act, (Tex. Occ. Code ch. 301 *et seq.*) and the rules promulgated thereunder by the Board. The charges include inappropriate treatment of a patient (her daughter); provision of inaccurate information to an employer; and intemperate use of marijuana. This Proposal for Decision recommends that Respondent's license be suspended for two years, but that, as requested by Staff, the suspension be probated.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on April 11, 2012, before Administrative Law Judge Steven D. Arnold in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff Attorney Lance R. Brenton represented Staff. Respondent appeared *pro se*. The hearing concluded that day and the record closed on May 4, 2012, with the filing of briefs.

II. DISCUSSION

Staff offered the testimony of nurses Denise McWilliams, Yvette Dickens, Lisa Harmon (Respondent's daughter), and its expert, Dr. Melinda Hester. It also offered into evidence 13 exhibits, all of which were admitted. Respondent testified on her own behalf and offered the testimony of Dr. Rowland. She offered into evidence ten exhibits, which were admitted over objection.

A. Charges 1 through 3 – Improper Treatment of a Patient

Charges 1 and 2 relate to activities that occurred on August 28, 2008. At that time, Respondent was employed by, but not on duty with, Medina Hospital, Hondo, Texas (Medina). On that date, Respondent brought her pregnant daughter to Medina's emergency room with pre-term contractions. While on the way to Medina, Respondent spoke with her daughter's doctor, Dr. Rowland, and described her daughter's symptoms. There is dispute as to what Dr. Rowland told Respondent, with Staff contending that Dr. Rowland gave respondent "orders" (a term of art in the medical field meaning a directive from a physician to undertake certain treatments, and it is based upon the physician's own assessments or those that are communicated to him by nurses or other healthcare personnel).

Staff presented testimony of the nurses on duty that when Respondent arrived at Medina, she offered to get and administer the medication order by Dr. Rowland, that she pulled the medications from the Pyxis machine, placed her daughter on the monitor, drew labs, established IV access, hung the IV bag, drew up the medications, and administered the medications. Respondent admitted that she provided care to her daughter, but argued that it was no more than any mother would do for her daughter and, to the extent that nursing skills were being employed, she was merely assisting the emergency room nurse.

Dr. Rowland's testimony on this issue is instructive. He stated that Respondent is an excellent nurse, but given the seriousness of the situation she violated the nurse-patient relationship when she attempted to provide treatment to her daughter. He did state, however, under cross examination that he had provided treatment to his own family. But neither the fact that he had treated his own family or the fact that Respondent was a very good nurse excused her lapse of judgment according to Dr. Rowland. He did, however, recommend a sanction less severe than revocation of her license.

Charge 2 also relates to activities that occurred on August 28, 2008. Following the emergency room visit, Respondent was informed that Medina was unable to treat her daughter and that she would need to be taken to University Hospital (University) for further treatment. Respondent admits that before leaving Medina, she took the remnants of a vial of Terbutaline

because she was afraid that doctors at University would not act to stop her daughter's contractions. Once she arrived at University, she was informed that her fears were correct and the physicians would take no action to stop the contractions. She attempted to talk to the doctors regarding their decision, but was unsuccessful in changing their minds. Respondent feared that if the contractions were permitted to continue, her daughter and grandchild might die, so she administered the Terbutaline. As a consequence, the contractions ceased.

Charge 3 relates to activities that occurred on October 13, 2008. At that time, Respondent was employed by, but not on duty with, Medina. She had previously been warned not to engage in nursing duties with respect to her daughter.

Staff presented testimony of the nurses on duty that Respondent did not seek assistance from the nurse assigned to her daughter and instead stopped the infusion of Pitocin (used to induce labor) to change a gown for her daughter. Respondent then failed to restart the infusion and failed to notify the assigned nurse that she had stopped the infusion. Respondent testified that her daughter's water had broken and her gown was soaked. She stated that she was simply assisting her daughter in removing the wet garments and was not engaged in nursing. She also stated that the Pitocin drip accidentally stopped when she was changing her daughter's gown.

Staff's expert testified that Respondent's actions were grossly inappropriate, and (in her mind) amounted to the practice of medicine.

The ALJ finds that Respondent clearly violated the nurse-patient relationship with respect to all three charges. As to Charge 1, she engaged in nursing activities at a time when she should have left those duties to others. As to Charge 2, she clearly appropriated the remnants of the vial of terbutaline and administered it to her daughter contrary to physicians' orders. With respect to Charge 3, she again engaged in nursing activities at a time when she should have left those duties to others.

Charge 2 warrants further comment by the ALJ. Taken in the abstract, the charge appears quite horrific; a trained nurse not only defies a physician, but substitutes her own judgment for that of the physician and treats the patient accordingly. But it is necessary to view this in context. Respondent is a trained nurse and, by all accounts, a very good nurse. As a mother and a nurse, she had fears that University would let her daughter's contractions continue

and that if the contractions were permitted to continue, her daughter and grandchild would be in severe danger of dying. Therefore, she administered the Terbutaline. As a result, her daughter was able to continue her pregnancy and deliver a healthy grandchild. Respondent stated that she would never take this sort of action again because she knew it was against standard nursing practice. This does not excuse Respondent's actions, but, to the ALJ, placed her actions in the category of "one of a kind."

B. Charge 4 – Provision of Inaccurate Information to an Employer

Staff presented evidence that on May 26, 2011, while applying for employment with South Texas Regional Medical Center, Jourdanton, Texas (Jourdanton), Respondent submitted an online Application for Employment in which she provided false information regarding her reason for leaving her employment with Medina. Respondent indicated that she left to expand her surgical nursing experience; however, Respondent was terminated from employment with Medina. Staff contends that Respondent's conduct was likely to deceive the employer and could have affected its decision to offer her employment. Respondent testified that she found the application confusing and that the submission was a mistake.

The ALJ finds that Respondent did submit a false employment application that was likely to deceive the potential employer.

C. Charge 5 – Intemperate Use of Marijuana

Staff presented evidence that on May 31, 2011, Respondent engaged in the intemperate use of marijuana in that Respondent provided a specimen for a pre-employment drug screen at Jourdanton, which resulted positive for marijuana. Possession of marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). Staff contends that the use of Marijuana 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.

Respondent testified that prior to taking the pre-employment drug screen, she had attended a party to celebrate the release of a CD by a friend. She went to the party but did not knowingly engage in the use of marijuana. It was only later that she found out that some of the

food at the party had been infused with marijuana. She stated that she knew people at the party may have been partaking in marijuana and, for that reason, moved to a different room to be away from the drug.

The ALJ finds that although it is likely that Respondent consumed marijuana, she did not do so knowingly.

D. Sanctions

Staff's expert, Melinda Hester, testified that the Respondent's actions were flagrant violations of not only nursing law, but the basic tenets and philosophy of the nursing profession. Dr. Hester's recommendation that the Respondent be placed on a probated suspension with accompanying monitored practice serves three compelling purposes: (1) it makes clear to the Respondent that she acted wrongly, communicates the seriousness of those violations, and provides remedial measures which will help to ensure that she does not repeat the same behaviors; (2) it provides important notice and precedent to the nurses of Texas that care should not and cannot be provided to family members; and (3) that the decision by a nurse to override the treatment plan and orders of a physician is not and cannot be tolerated.¹

Dr. Hester testified that the Board has broad-ranging powers to sanction for violations such as those alleged against Respondent. Those power range from the ability to impose a monetary fine to revocation of the person's license. In this case, because of Respondent's prior good record Staff recommends a probated suspension of her license, which falls within the disciplinary guidelines according to Dr. Hester.

The Board asked that administrative costs be assessed against Respondent but failed to provide any evidence of those costs. Therefore, the ALJ finds that no administrative costs should be assessed against Respondent.

¹ At hearing, Staff also recommended Respondent take certain continuing education courses as a part of her sanctions. In her post-hearing brief, Respondent stated that she had attended a psychological evaluation by Dr. Haertner and group counseling with UNUM, and had completed health net classes on jurisprudence, nursing ethics, nursing practice and medication administrations. In its post-hearing brief, which was filed after Respondent's, Staff made no mention of the continuing education portion of its proposed sanctions. Accordingly, the ALJ assumes that Staff concurs that the courses taken by Respondent satisfy the earlier-proposed requirements. If the ALJ's assumption is incorrect, the ALJ finds that the continuing education requirements recommended by Staff are reasonable and appropriate.

III. FINDINGS OF FACT

1. Patricia Ruth Harmon (Respondent) holds Permanent Certificate No. 539411 (License) issued by the Texas Board of Nursing (Board).
2. Based on Respondent's actions: (a) on August 28, 2008, at Medina Hospital, Hondo, Texas (Medina), and University Hospital (University) and October 13, 2008, at Medina, where Respondent improperly provided treatment to a patient (her daughter) in violation of Sections 301.452(b)(10) and (13) of the Texas Occupation Code and 22 Tex. Admin. Code §§ 217. 11(1)(A), (1)(B), (1)(C), (1)(D), (1)(J), and (1)(P), and 217. 12(1)(A), (1)(B), (4), (6)(D), and (6)(G); (b) on May 26, 2011, providing the prospective employer inaccurate information while applying for employment in violation of Sections 301.452(b)(10) of the Texas Occupation Code and 22 Tex. Admin. Code §§ 217.12(6)(H) and (6)(I); and (3) on May 31, 2011, engaged in the intemperate use of marijuana in violation of Sections 301.452(b)(9) and (10) of the Texas Occupation Code and 22 Tex. Admin. Code §§ 217:12(4), (5), (10)(A), (10)(D), and (11)(B), the Board notified that it intended to take disciplinary action against Respondent's license.
3. Respondent timely requested a hearing.
4. On March 30, 2012, the Staff of the Board mailed a Notice of Administrative Hearing to Respondent. The notice 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.
5. The hearing on the merits was held on April 11, 2012. All parties appeared and participated in the hearing. The record closed with the filing of post-hearing briefs on May 4, 2012.
6. On August 28, 2008, Respondent, while employed by, but not on duty with, Medina Hospital, Hondo, Texas (Medina), brought her pregnant daughter to Medina's emergency room with pre-term contractions.
7. While on the way to Medina, Respondent talked with her daughter's doctor, Dr. Rowland, who told her the medications her recommended.
8. When Respondent arrived at Medina, she offered to get and administer the medication by Dr. Rowland, she pulled the medications from the Pyxis machine, placed her daughter on the monitor, drew labs, established IV access, hung the IV bag, drew up the medications, and administered the medications.
9. Respondent was informed that Medina was unable to treat her daughter and that she would need to be taken to University Hospital (University) for further treatment.
10. Before leaving Medina, Respondent took the remnants of a vial of Terbutaline because she was afraid that doctors at University would not act to stop her daughter's contractions.

11. Once Respondent arrived at University, she was informed that physicians would take no action to stop the contractions. She attempted to talk to the doctor's regarding their decision, but was unsuccessful in changing their minds. As a result, and because of her fear that if the contractions were permitted to go to continue her daughter and grandchild might die, she administered the Terbutaline.
12. On October 13, 2008, Respondent was employed by, but not on duty with, Medina. She had previously been warned not to engage in nursing duties with respect to her daughter.
13. Respondent's daughter was admitted to Medina and was administered Pitocin (a drug to induce labor).
14. Respondent did not seek assistance from the nurse assigned to her daughter and instead stopped the infusion of Pitocin to change a gown for her daughter. Respondent then failed to restart the infusion and failed to notify the assigned nurse that she had stopped the infusion.
15. On May 26, 2011, while applying for employment with South Texas Regional Medical Center, Jourdanton, Texas (Jourdanton), Respondent submitted an online Application for Employment in which she provided false information regarding her reason for leaving her employment with Medina.
16. Respondent did not knowingly engage in the use of marijuana prior to her May 31, 2011, pre-employment drug screen at Jourdanton.

IV. CONCLUSIONS OF LAW

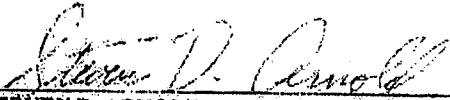
1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. SOAH has jurisdiction over matters related to the hearing in this case, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided. Tex. Gov't Code ch. 2001; 22 Tex. Admin. Code § 213.10.
4. A nurse is subject to discipline for: (a) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; and (b) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm. Tex. Occ. Code § 301.452(b)(10), (13).
5. The foregoing Findings of Fact and Conclusions of Law indicate that the Board is authorized to sanction Respondent under Sections 301.452(b)(10) and (13) of the Texas Occupations Code.

6. Under the Board's Disciplinary Matrix and its Disciplinary Guidelines for Criminal Conduct, the actions taken by Respondent warrant probated suspension of Respondent's license.

V. RECOMMENDATION

The Board should order that Respondent's Permanent Certificate No. 539411 be suspended for two years, but the suspension be probated.

ISSUED July 3, 2012.



STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 539411	§	OF
ISSUED TO	§	
PATRICIA RUTH HARMON	§	ADMINISTRATIVE HEARINGS

STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

COMES NOW, Staff of the Texas Board of Nursing, and files exceptions to the Proposal for Decision issued in this matter on July 3, 2012, and would state as follows:

I.

Staff excepts to Conclusion of Law Numbers Four and Five, and the accompanying Finding of Fact Number 16, to the extent that the ALJ does not find that the Respondent is subject to discipline under Section 301.452(b)(9) and subject to discipline for unprofessional conduct under §217.12(10)(D) due to her positive screen for marijuana on May 31, 2011. In Finding of Fact Number 16, the ALJ finds that the "Respondent did not knowingly engage in the use of marijuana prior to her May 31, 2011 drug screen." Staff disagrees with this finding to the extent that it is presumably the basis for the lack of finding a violation of Tex. Occ. Code Section 301.452(b)(9) as well as §217.12(10)(D), as alleged by Staff in Charge V of the First Amended Formal Charges. First, there is no mens rea requirement that a licensee "knowingly" engaged in intemperate use of a drug. This is best illustrated by considering the ALJ's conclusions of law which found that the Respondent had committed violations of Sections 301.452(b)(10)&(13), without specifically finding that the Respondent had "knowingly" acted or attempted to act to deceive, defraud, or injure a patient or the public or "knowingly" failed to care for a patient in a manner that exposes a patient to a risk of harm. Examples of a situation in which a nurse would undoubtedly be subject to discipline for an action without a finding of intent or knowledge would be:

- (1) a home health nurse assigned to care for a patient requiring constant monitoring who then experienced a serious health problem due to the nurse falling asleep; or
- (2) A nurse who accidentally gave a dose 100 times that ordered by a physician due to a mistake in calculations.

In both situations, we could presume that the nurse did not intentionally or knowing take action which resulted in the negative outcome. At most, the relevant state of mind would be negligence. However, remediation would be necessary to make sure that similar behavior did not reoccur, even in the absence of such a high mens rea.

Furthermore, the Board rule at §217.12(10)(D) *clearly* does not require a mental state for a finding

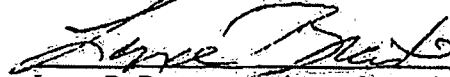
that a violation occurred. A positive drug screen for a drug which has not been consumed by prescription is a violation of the rule, and knowledge or intent is not required for the underlying use. To find otherwise would set a very dangerous precedent in which any person could avoid discipline due to a drug screen by merely stating that they did not consume the drug and it must have entered their system by accident or the actions of another person. The Board would then be required to show that the person knowingly consumed the substance, which would in almost all cases be impossible, given the illicit nature of most illegal drug use. This is an unacceptable requirement. If the Legislature or Board meant to insert a mens rea requirement of intentional or knowing use, it would have done so.

Finding of Fact Number Six should state only that the Respondent submitted a drug screen which resulted positive for marijuana on May 31, 2011, which is a violation of 301.452(b)(9)&(10) and §217.12(13), and Staff requests that the ALJ issue a modified PFD consistent with these exceptions

WHEREFORE, Staff requests that the ALJ amend the PFD by

Respectfully submitted,

TEXAS BOARD OF NURSING



Lance R. Brenton, Assistant General Counsel
State Bar No. 24066924
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6880; F: (512) 305-8101

CERTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of *Staff's Exceptions to the Proposal for Decision* has been provided by mail on this the 20th day of July, 2012, to:

Patricia Ruth Harmon
2313 Avenue E.
Hondo, TX 78861



Lance R. Brenton, Assistant General Counsel

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 6, 2012

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

VIA FACSIMILE: 305-8101

**RE: Docket No. 507-12-4866; In The Matter of Permanent Certificate
Number 539411 Issued To Patricia Ruth Harmon**

Dear Ms. Thomas:

On July 3, 2012, we issued the Proposal for Decision (PFD) in this docket. Only Staff of the Texas Board of Nursing (Board) filed exceptions and no party filed replies to exceptions. Having reviewed Staff's exceptions, the Administrative Law Judge (ALJ) finds that the following changes should be made to the PFD.

Staff notes that there is no *mens rea* requirement applicable to the prohibition against the intemperate use of a drug. The ALJ agrees, but also notes that the *mens rea*, or intent, is a factor to be considered in the sanction. Accordingly, the ALJ recommends that the following be added to the PFD as Finding of Fact No. 15A:

- 15A. Respondent submitted a drug screen that tested positive for marijuana on May 31, 2011.

This requires the following revisions to Conclusions of Law Numbers 4 and 5:

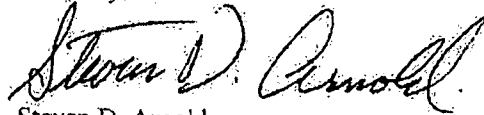
4. A nurse is subject to discipline for: (a) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient; (b) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; and (c) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm. Tex. Occ. Code § 301.452(b)(9), (10), and (13).

300 W. 15th Street, Suite 502, Austin, Texas 78701 / P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

5. The foregoing Findings of Fact and Conclusions of Law indicate that the Board is authorized to sanction Respondent under Sections 301.452(b)(9), (10), and (13) of the Texas Occupations Code and 22 Tex. Admin. Code §§ 217.11(1)(A), (1)(B), (1)(C), (1)(D), (1)(J), and (1)(P), and 217.12(1)(A), (1)(B), (4), (5), (6)(D), (6)(G), (6)(H), (6)(I), (10)(A), (10)(D), and (11)(B).

With these changes, the PFD is ready for your consideration.

Sincerely,



Steven D. Arnold
Administrative Law Judge

SDA/Ls

XC: Lance R. Brenton, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701
- VIA FACSIMILE: 305-8101
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 -VIA
FACSIMILE: 305-8101
Patricia Harmon, 2313 Avenue E, Hondo, TX 78861 - VIA REGULAR MAIL

In the Matter of Permanent License § **BEFORE THE TEXAS**
Number 539411, Issued to §
PATRICIA RUTH HARMON, Respondent § **BOARD OF NURSING**

SECOND AMENDED FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, PATRICIA RUTH HARMON, is a Registered Nurse holding license number 539411, which is in current 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 August 28, 2008, while employed, but not on duty, with Medina Community Hospital, Hondo, Texas, Respondent inappropriately provided medical care to her daughter, who she had brought to the hospital emergency room with pre-term contractions. The Respondent's conduct constituted a violation of the nurse-patient relationship, and subjected the patient to risk associated with a loss of objectivity by the Respondent and confusion and over reliance by the patient, which could have interfered with the development of the patient and the assigned nurse's care giver relationship.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10)&(13), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(B),(1)(J), and 217.12(1)(A),(1)(B),(4),(6)(D).

CHARGE II.

On or about August 28, 2008, while employed, but not on duty, with Medina Community Hospital, Respondent misappropriated the remains of a vial of Terbutaline from the Emergency Department. Respondent took the vial with her when the patient, a family member, was transferred to University Hospital for treatment of pre-term labor. Further, after the patient was admitted to University Hospital, Respondent administered two (2) doses of the misappropriated Terbutaline to the patient, without an order from the current physician and then intentionally withheld information from the physician and nursing staff that she administered the medication to the patient. Respondent's conduct exposed the patient unnecessarily to a risk of harm from adverse reactions to the medication administered without benefit of a physician's expertise. In addition, Respondent's conduct was likely to injure the patient in that care givers would not have complete and pertinent information upon which to base their care decisions. In addition, Respondent's conduct was likely to injure the patient in that boundary violations occurred when Respondent acted as the patient's nurse which may have confused the patient and interfered with the development of the care giver relationship between the

patient and the assigned physician.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10)&(13), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(B),(1)(C),(1)(D),(1)(J)&(1)(P) and 217.12(1)(A),(1)(B),(4),(6)(D)&(6)(G).

CHARGE III.

On or about October 13, 2008, while employed, but not on duty, with Medina Community Hospital, Hondo, Texas, Respondent did not seek assistance from the patient's assigned nurse and, instead, inappropriately stopped the infusion of Pitocin, used to induce labor, in order to change a gown for Patient Number 002051024, a family member. Respondent then failed to restart the infusion. Further, Respondent failed to notify the assigned nurse that she stopped the infusion. Respondent's conduct exposed the patient unnecessarily to a risk of harm in that the medication was not administered as ordered, per protocol, and resulted in a delayed induction of labor.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10)&(13), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(B),(1)(C),(1)(D),(1)(P) and 217.12(1)(A),(1)(B)&(4).

CHARGE IV.

On or about May 26, 2011, while applying for employment with South Texas Regional Medical Center, Jourdanton, Texas, Respondent submitted an online Application for Employment in which she provided false information regarding her reason for leaving her employment with Medina Community Hospital, Hondo, Texas. Respondent indicated that she left to expand her surgical nursing; however Respondent was terminated from employment with Medina Community Hospital, Hondo, Texas, on October 15, 2008. Respondent's conduct was likely to deceive the employer and could have affected its decision to offer her employment.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(6)(H) &(6)(I).

CHARGE V.

On or about May 31, 2011, Respondent engaged in the intemperate use of Marijuana in that Respondent provided a specimen for a preemployment drug screen at South Texas Regional Medical Center, Jourdanton, Texas, which resulted positive for Marijuana. Possession of Marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Marijuana 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(4),(5), (10)(A),(10)(D)&(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 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 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, for Lying and Falsification, and for Fraud, Theft and Deception, which can be found at the Board's website, www.bon.texas.gov.

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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.

Filed this 30th day of March, 2012.

TEXAS BOARD OF NURSING



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