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*Stephanie P. Johnson*  
Executive Director of the Board

**DOCKET NUMBER 507-16-0272**

**IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 124114,  
ISSUED TO  
CHERYL LYNN MCWHORTER**

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§  
§  
§

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**OPINION AND ORDER**

**TO: CHERYL LYNN MCWHORTER  
RT 2 BOX 24  
SHAMROCK, TX 79079**

**SHANNON KILGORE  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting of the Eligibility and Disciplinary Committee of the Texas Board of Nursing (Committee) on June 14, 2016, the Committee, pursuant to 22 Tex. Admin. Code §213.23, considered the following items: (1) Order No. 4, *Dismissing Case*, issued by the ALJ in the above cited matter; (2) Staff's recommendation to the Committee that the Respondent's vocational nursing license be revoked by default; and (3) Respondent's recommendation to the Committee regarding the above cited matter, if any.

On March 23, 2016, 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 her behalf. During the hearing on March 23, 2016, Staff introduced evidence into the record demonstrating that Respondent had been sent a First Amended Notice of Hearing by first class certified mail return receipt requested to her 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. 4, *Dismissing Case*, 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 and §2001.058(d-1).

The Committee, after review and due consideration of Order No. 4, 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 license to practice vocational nursing in the State of Texas. The Committee further finds that the First Amended Formal Charges were properly initiated and filed in accordance with the Occupations Code §301.458. The Committee further finds that proper and timely notice regarding the violations alleged in the First Amended 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 Committee

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 appear, the Committee has determined that the factual allegations listed in the First Amended Formal Charges are to be deemed admitted by default and the Committee is authorized to enter a default order against the Respondent pursuant to the Government Code §2001.056 and §2001.058(d-1) and 22 Tex. Admin. Code §213.22. Further, the Committee has determined that it is entitled to revoke the Respondent's vocational nursing license pursuant to 22 Tex. Admin. Code §213.23 and §213.33(m).

Therefore, the Committee hereby adopts the factual allegations, which have been deemed admitted, and the conclusions of law contained in the First Amended 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 Number 124114, previously issued to CHERYL LYNN MCWHORTER, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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

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 14<sup>th</sup> day of June, 2016.

TEXAS BOARD OF NURSING

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

Attachment: First Amended Formal Charges

**In the Matter of** § **BEFORE THE TEXAS**  
**Permanent Vocational Nurse** §  
**License Number 124114** §  
**Issued to CHERYL LYNN MCWHORTER,** §  
**Respondent** § **BOARD OF NURSING**

### **FIRST AMENDED FORMAL CHARGES**

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, CHERYL LYNN MCWHORTER, is a Vocational Nurse holding License Number 124114, 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 November 10, 2014, while employed as a Licensed Vocational Nurse with Wheeler Nursing and Rehabilitation, Wheeler, Texas, Respondent misappropriated Hydrocodone belonging to patient J.S. in that once the missing medication was noted Respondent was confronted and admitted to the misappropriation. Additionally, Respondent threw away the medication narcotic sign out sheet. Respondent's conduct was likely to defraud the facility and patient of the cost of the medications.

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(1)(B),(6)(G),(8),(10)(E) and (11)(B).

#### **CHARGE II.**

On or about October 7, 2015, Respondent was indicted for DIVERT CONTROLLED SUBSTANCE FOR PERSONAL USE, a State Jail Felony offense, committed on or about November 11, 2014, and was subsequently arrested on December 15, 2015, by Wheeler County Sheriff's Office, Wheeler County, Texas. This case is currently pending.

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 (11)(B)&(13).

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).

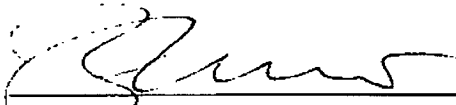
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

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, for Lying and Falsification, for Fraud, Theft and Deception, which can be found at the Board's website, [www.bon.texas.gov](http://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](http://www.bon.texas.gov/disciplinaryaction/discp-matrix.html).

Filed this 7th day of March, 2016.

TEXAS BOARD OF NURSING



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