DOCKET NUMBER 507-10-4647

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER 163679	§	**OF**
ISSUED TO	§	
AMY LYNNE BENTON	§	**ADMINISTRATIVE HEARINGS**

TEXAS BOARD OF NURSING
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.
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: AMY LYNNE BENTON
5813 GALLANT FOX LANE
PLANO, TX 75093

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on January 27-28, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the vocational nursing license of Amy Lynne Benton without changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

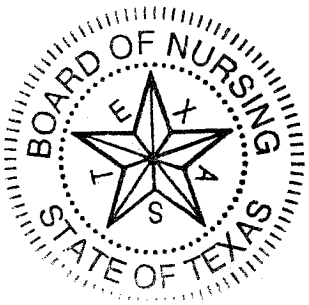
The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity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

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein. 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 163679 previously issued to AMY LYNNE BENTON to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 163679, previously issued to AMY LYNNE BENTON, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

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



Entered this 28th day of January, 2011.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-10-4647 (October 4, 2010).

SOAH DOCKET NO. 507-10-4647

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NUMBER 163679	§	
	§	
ISSUED TO AMY LYNNE BENTON	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the vocational nurse's license issued to Amy Lynne Benton (Respondent) for pleading nolo contendere to the offense of Prostitution, a class B misdemeanor. The Administrative Law Judge (ALJ) recommends adopting Staff's requested sanction of revocation of Respondent's license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On September 21, 2010, ALJ Richard R. Wilfong convened the hearing at the State Office of Administrative Hearings located on the fourth floor of the William P. Clements Building, 300 West 15th Street, Austin, Texas. The Board was represented by Assistant General Counsel John F. Legris. Despite being sent proper notice, Respondent did not appear nor was she represented at the hearing. Based on Respondent's failure to appear, Staff moved for a default. In support of its default motion, Staff provided sufficient documentary evidence to establish both jurisdiction and adequate notice of the hearing. The motion was granted, establishing all the allegations pled against Respondent as true.

II. RECOMMENDATION

On June 2, 2009, Respondent plead nolo contendere to the offense of Prostitution, a class B Misdemeanor in Cause No. MB0952713M in the County Court of Criminal Appeals No. 2, Dallas, Texas. She was placed on deferred adjudication for 12 months and paid a fine and court costs totaling $938.

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ recommends that Respondent's license be revoked.

III. PROPOSED FINDINGS OF FACT

1. Amy Lynne Benton (Respondent) holds permanent vocational nurse license number 163679 issued by the Texas Board of Nursing (Board).

2. On March 1, 2010, the Staff of the Board sent formal charges to Respondent by certified mail to her official address on record with the Board.

3. On March 19, 2010, Respondent filed a response admitting the offense of Prostitution as true.

4. On July 1, 2010, Staff sent its Notice of Hearing of the September 21, 2010 hearing to Respondent by certified mail to her official address on record with the Board. The U.S. Postal Service Track & Confirm website shows the item was delivered on July 3, 2010.

5. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.

6. The Notice of Hearing stated, in at least 12-point bold-faced font, that "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."

7. The hearing on the merits was convened at 9:00 a.m. on September 21, 2010, before ALJ Richard R. Wilfong at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.

8. Staff appeared at the hearing through its Assistant General Counsel, John F. Legris. Respondent did not appear, was not represented at the hearing, and did not provide an explanation for her failure to appear.

9. Staff made a motion for default and offered evidence demonstrating jurisdiction, proper notice, and the appropriateness of the remedy sought by Staff.

10. Staff's motion for default was granted.

11. The allegations in Staff's Notice of Hearing are deemed true.

12. On June 2, 2009, Respondent plead nolo contendere to the offense of Prostitution committed on February 26, 2009, in Cause No. MB0952713M in the County Criminal Court of Appeals No. 2, Dallas, Texas. Respondent was placed on deferred adjudication for 12 months and paid a fine and court costs totaling $938.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ch. 301.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.

3. Adequate, proper and timely notice of the hearing was provided. TEX. GOV'T CODE ch. 2001; 22 TEX. ADMIN. CODE (TAC) § 213.10; TEX. OCC. CODE § 301.454.

4. The notice complied with the requirements of SOAH's default rule, 1 TAC § 155.501.

5. Pursuant to 1 TAC § 155.501, the allegations set forth in the notice of hearing and the forgoing Findings of Fact are deemed admitted.

6. Respondent's conduct as described in Finding of Fact No. 12 is prohibited by Chapter 481 of the Texas Health and Safety Code and constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE § 301.452(b)(3) and (10), and is a violation of 22 TEX. ADMIN. CODE § 217.12(13).

7. The Board is authorized to revoke Respondent's license. TEX. OCC. CODE § 301.453.

8. Based on the above Findings of Fact and Conclusions of Law, the Board should revoke Respondent's nursing license.

SIGNED October 4, 2010.

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS