

DOCKET NUMBER 507-10-2717



IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 179423
ISSUED TO
KIMBERLY K. DONALD

§
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§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARING

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.
Shannon Kilgore
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: KIMBERLY K. DONALD
PO BOX 618
KILGORE, TX 75663

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

At the regularly scheduled public meeting on October 21-22, 2010, 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 Kimberly K. Donald without changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

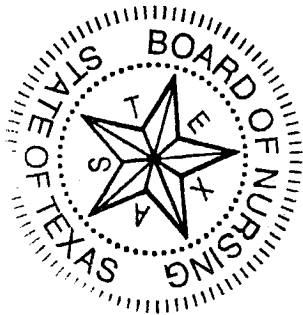
The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity 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 179423, previously issued to KIMBERLY K. DONALD, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate 179423, previously issued to KIMBERLY K. DONALD, 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 22nd day of October, 2010.

TEXAS BOARD OF NURSING

A handwritten signature in cursive script, appearing to read 'Katherine A. Thomas', is written over a horizontal line.

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

Attachment: Proposal for Decision; Docket No. 507-10-2717 (July 28, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 28, 2010

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. 507-10-2717; In the Matter of Permanent Certificate No. 179423
Issued to Kimberly K. Donald**

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,

A handwritten signature in black ink, appearing to read "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/ap

Enclosures

XC: John Legris, 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**
Kimberly K. Donald, P.O. Box 618, Kilgore, TX 75663 – **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-2717

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 179423 ISSUED TO	§	OF
	§	
KIMBERLY K. DONALD	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action against Kimberly K. Donald seeking to revoke her license as a vocational nurse. Staff made two allegations against Ms. Donald: (1) that she violated a prior Board order; and (2) that she had a 2008 felony drug conviction. Ms. Donald failed to appear at the hearing. The Administrative Law Judge (ALJ) grants a default to Staff and recommends that Ms. Donald's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on June 28, 2010, before ALJ Shannon Kilgore at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. John Legris, Assistant General Counsel, appeared for Staff. Neither Ms. Donald nor anyone acting on her behalf appeared at the hearing.

Staff introduced evidence establishing that Ms. Donald had been sent proper and timely notice of the hearing and of the allegations against her. The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law. Staff then made an oral motion for default due to Ms. Donald's failure to attend the hearing. The motion is granted, resulting in all of Staff's allegations against Ms. Donald being deemed admitted.

Staff also presented its expert witness, Bonnie Cone, to testify regarding the appropriate sanction. Ms. Cone observed that Ms. Donald had entered into an agreed Board order in 2007. That order required Ms. Donald to pay a \$250 fine within 45 days of the entry of the order. Ms. Donald failed to pay the fine. Ms. Cone noted that, under the Board's Disciplinary Matrix

(Matrix),¹ such a violation of a technical, non-remedial requirement of a Board order would be a "sanction level I" violation. The Matrix indicates that such a violation would, by itself, warrant remedial education with or without an additional fine. Then Ms. Cone addressed the 2008 felony drug conviction. Ms. Cone testified that, for felony convictions, the Matrix refers to the Board's Disciplinary Guidelines for Criminal Conduct (Criminal Guidelines). The Criminal Guidelines set out the factors that the Board must consider when making licensing decisions based on criminal convictions.² The Criminal Guidelines also state that drug-related convictions are related to the practice of nursing, and such a conviction within the past three years should result in revocation or suspension. Ms. Cone testified that, in this case, revocation would be appropriate because: there are two separate bases for sanction (the violation of the 2007 Board order and the conviction); and, the 2007 Board order was based in part on events related to alcohol and illegal substances, so there is ongoing concern about such issues for Ms. Donald.

The ALJ recommends that the Board revoke Ms. Donald's vocational nursing license.

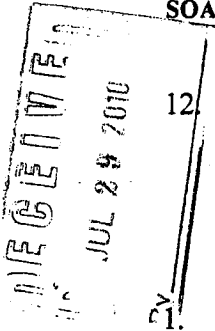
II. FINDINGS OF FACT

1. Kimberley K. Donald is licensed as a vocational nurse and holds License No. 179423 issued by the Texas Board of Nursing (Board).
2. Ms. Donald's official address on file with the Board is: P.O. Box 618, Kilgore, Texas 75663.

¹ 22 TEX. ADMIN. CODE § 213.33(b).

² These factors include, *inter alia*, the nature and seriousness of the crime; the actual damages, physical or otherwise, resulting from the criminal activity; the extent and nature of the person's past criminal activity; the age of the person when the crime was committed; the amount of time that has elapsed since the person's last criminal activity; work activity of the person before and after the criminal activity; evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; a record of steady employment and has supported his or her dependents; other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional authorities; whether the person paid all outstanding court costs, supervision fees, fines, and evidence of restitution to both victim and community; the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of nursing practice; successful completion of probation/community supervision; and if criminal activity was due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance (written verification of compliance with any treatment). These factors include those set forth in Chapter 53 of the Texas Occupations Code.

3. On February 18, 2010, the Board's staff (Staff) mailed its Notice of Hearing to Ms. Donald at P.O. Box 618, Kilgore, Texas 75663 by United States Post Office certified mail. It was returned, unclaimed.
4. 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.
5. The notice of hearing contained the following language in capital letters in at least 12-point boldface type: "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."
6. The hearing convened on June 28, 2010, before Administrative Law Judge Shannon Kilgore at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. John Legris, Assistant General Counsel, appeared for Staff. Neither Ms. Donald nor anyone acting on her behalf appeared at the hearing.
7. Staff made an oral motion for default, which is granted.
8. On or about July 31, 2007, Ms. Donald failed to comply with the Agreed Order issued to her on June 12, 2007, by the Board of Nurse Examiners for the State of Texas. Non-compliance is the result of Ms. Donald's failure to comply with Stipulation Number Four (4) of the Order, which states in pertinent part, "Respondent shall pay a monetary fine in the amount of two hundred fifty dollars (\$250.00) within forty-five (45) days of entry of this Order...."
9. The 2007 Board order was based in part on failure to disclose convictions for possession of a controlled substance and driving under the influence.
10. On or about February 21, 2008, Ms. Donald was convicted of "Possession of a Controlled Substance PG 1 <1G Methamphetamine," a felony offense committed on September 9, 2007, in the 15th District Court, Grayson County, Texas, Case No. 056711-15. Ms. Donald was placed on community supervision for a period of four (4) years and ordered to pay a fine in the amount of seven hundred fifty dollars (\$750.00), restitution in the amount of one hundred forty dollars (\$140.00), and court costs.
11. The use of Methamphetamine by a licensed vocational 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.



Ms. Donald was born in 1965, and so was in her early forties at the time of her 2008 felony conviction, which was not for a crime of youthful indiscretion.

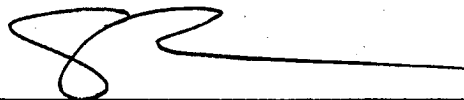
III. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter. TEX. OCC. CODE (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Notice of the formal charges and of the hearing on the merits was provided to Ms. Donald as required. TEX. GOV'T CODE §§ 2001.051 and 2001.052.
4. Because of Ms. Donald's failure to appear at the hearing despite being provided proper notice, default is appropriate and the allegations in this case are deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. Ms. Donald is subject to discipline under Code § 301.452(b)(1), (3), and (10) and 22 TEX. ADMIN. CODE § 217.12(11)(B) and (13).
6. Drug offenses are related to the practice of nursing. 22 TEX. ADMIN. CODE § 213.28.
7. The Board's Disciplinary Guidelines for Criminal Conduct (Criminal Guidelines) state that a drug-related conviction within the past three years should result in revocation or suspension. The Criminal Guidelines also set out the factors that the Board must consider when making licensing decisions based on criminal convictions, which include the factors in Chapter 53 of the Texas Occupations Code.

IV. RECOMMENDATION

Ms. Donald's license to practice as a vocational nurse should be revoked.

SIGNED July 28, 2010.



SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS