

DOCKET NUMBER 507-10-3523

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 540935
ISSUED TO
SCARLETT D. MAUNEY

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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.
Patricia P. Roman
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: SCARLETT D. MAUNEY
2500 FAIRVIEW DRIVE, APT. 1524
ALVIN, TX 77511

PRATIBHA J. SHENOY
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 registered nursing license of Scarlett D. Mauney 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 540935, previously issued to SCARLETT D. MAUNEY, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate 540935, previously issued to SCARLETT D. MAUNEY, 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



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

Attachment: Proposal for Decision; Docket No. 507-10-3523 (July 26, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

July 26, 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

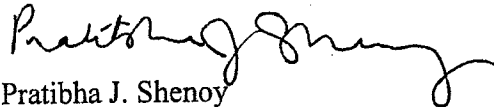
RE: Docket No. 507-10-3523; In the Matter of Permanent Certificate No. 540935 Issued to Scarlett D. Mauney

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,


Pratibha J. Shenoy
Administrative Law Judge

PJS/slc

Enclosures

XC: John Legris, 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**
Scarlett D. Mauney, 2500 Fairview Drive, Apt. 1524, Alvin, TX 77511 – **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3523

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
CERTIFICATE NO. 540935 § OF
ISSUED TO SCARLETT D. MAUNEY § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action seeking revocation of the nurse's license of Scarlett D. Mauney. Staff alleges that Ms. Mauney violated several provisions of the Nursing Practice Act¹ and the Board's rules.²

The hearing on the merits was held on July 6, 2010. Ms. Mauney failed to appear. Staff moved for default. In support of its motion, Staff offered proof that proper notice of the hearing had been provided, and Staff further offered testimony in support of its recommended sanction.³ The Administrative Law Judge (ALJ) grants Staff's motion for default. Accordingly, Staff's allegations are deemed admitted as true.⁴ The ALJ recommends that Ms. Mauney's license be revoked.

I. FINDINGS OF FACT

1. Scarlett D. Mauney holds permanent nurse license number 540935 issued by the Texas Board of Nursing (Board).
2. On September 21, 2009, the staff of the Board (Staff) sent Formal Charges to Ms. Mauney by certified mail, return receipt requested, to the official address provided by Ms. Mauney and kept on file by the Board. The mailing was received by Melody Mauney. On May 25, 2010, Staff sent First Amended Formal Charges to Ms. Mauney by certified mail, return receipt requested, to an alternate address provided by Ms. Mauney to the Board. The United States Postal Service "Track & Confirm" service for certified mail notified Staff that on May 29, 2010, delivery was attempted and a notice was left at the address. No delivery confirmation was obtained.

¹ TEX. OCC. CODE ch. 301.

² 22 TEX. ADMIN. CODE part 11.

³ Ms. Bonnie Cone, RN, a nursing practice consultant with the Board, testified that revocation is the appropriate remedy in this case.

⁴ 1 TEX. ADMIN. CODE § 155.501.

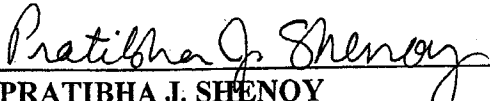
3. On April 5, 2010, Staff sent its Notice of Hearing for the July 6, 2010 hearing to Ms. Mauney by certified mail, return receipt requested, to her official address on record with the Board. The mailing was received by Melody Mauney.
4. The Notice of Hearing contained a statement of the time, place, 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 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."
6. The hearing on the merits was convened at 9:00 a.m. on July 6, 2010, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.
7. Staff appeared at the hearing through its Assistant General Counsel, John F. Legris. Ms. Mauney did not appear and was not represented at the hearing. Ms. Mauney did not file a motion for continuance or provide an explanation for her failure to appear.
8. Staff moved for a default based on Ms. Mauney's failure to appear, and offered evidence demonstrating jurisdiction, proper notice, and the appropriateness of the remedy sought by Staff.
9. Staff's motion for default was granted.
10. The allegations in Staff's Notice of Hearing were deemed true.
11. On or about September 29, 2007, while employed with Country Village Care Nursing Home in Angleton, Texas, Ms. Mauney engaged in the intemperate use of cannabinoids in that Ms. Mauney produced a drug screen which tested positive for cannabinoids.
12. On or about September 29, 2007, while employed with Country Village Care Nursing Home in Angleton, Texas, Ms. Mauney engaged in the intemperate use of opiates in that Ms. Mauney produced a drug screen which tested positive for Hydrocodone and Hydromorphone.
13. On or about September 30, 2007, while employed with Country Village Care Nursing Home in Angleton, Texas, Ms. Mauney falsely documented administration of Ativan 0.25 ml (0.5 mg) at 6:00 p.m. to Resident Number 2230 when Ms. Mauney had already left the building at 1:00 p.m. that day.

II. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter. TEX. OCC. CODE ch. 301 (Nursing Practice Act).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this docket, 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. Because of Ms. Mauney's failure to appear at the hearing despite being provided proper notice, default is appropriate and the allegations in Staff's Notice of Hearing are deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. Ms. Mauney's conduct as described in Finding of Fact No. 11 above constituted: unprofessional or dishonorable conduct likely to deceive, defraud, or injure a patient or the public; acceptance of a nursing assignment when such acceptance could be reasonably expected to result in unsafe or ineffective client care; and careless or repetitive conduct that may endanger a client's life, health, or safety. The conduct also constituted: intemperate use of alcohol or drugs that endangers or could endanger a patient; demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of use of drugs, chemicals, or any other mood-altering substances; use of a controlled substance or drug while on duty or on call and to the extent that such use may impair the nurse's ability to safely conduct to the public the practice authorized by the nurse's license; a positive drug screen for which there is no lawful prescription; and a violation of a state controlled substance law (chapters 481 of the Texas Health and Safety Code). Due to this conduct, Ms. Mauney is subject to discipline by the Board. TEX. OCC. CODE § 301.452(b)(9), (10); 22 TEX. ADMIN. CODE § 217.12(1)(E), (4), (5), (10)(A), (10)(D).
6. Ms. Mauney's conduct as described in Finding of Fact No. 12 above constituted: unprofessional or dishonorable conduct likely to deceive, defraud, or injure a patient or the public; acceptance of a nursing assignment when such acceptance could be reasonably expected to result in unsafe or ineffective client care; and careless or repetitive conduct that may endanger a client's life, health, or safety. The conduct also constituted: intemperate use of alcohol or drugs that endangers or could endanger a patient; demonstration of actual or potential inability to practice nursing with reasonable skill and safety to clients by reason of use of drugs, chemicals, or any other mood-altering substances; use of a controlled substance or drug while on duty or on call and to the extent that such use may impair the nurse's ability to safely conduct to the public the practice authorized by the nurse's license; and a positive drug screen for which there is no lawful prescription. TEX. OCC. CODE § 301.452(b)(9), (10); 22 TEX. ADMIN. CODE § 217.12(1)(E), (4), (5), (10)(A), (10)(D).

7. Ms. Mauney's conduct as described in Finding of Fact No. 13 above constituted: unprofessional or dishonorable conduct likely to deceive, defraud, or injure a patient or the public; carelessly failing to care adequately for a patient or to conform to minimum standards of acceptable nursing practice in a manner that exposes a patient or other person unnecessarily to risk of harm; carelessly failing to practice nursing in conformity with the standards of nursing practice set out in 22 TEX. ADMIN. CODE § 217.11, or in conformity with generally accepted nursing standards in applicable practice settings; and careless or repetitive conduct that may endanger a client's life, health, or safety. The conduct also constituted: failure to conform to the Nursing Practice Act and the Board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice; failure to accurately and completely report and document required information, including nursing care rendered and the administration of medications and treatments; improper management of client records; falsification of reports, client documentation, agency records or other documents; and providing information which was false, deceptive, or misleading in connection with the practice of nursing. TEX. OCC. CODE § 301.452(b)(10), (13); 22 TEX. ADMIN. CODE § 217.11(1)(A), (1)(D); 22 TEX. ADMIN. CODE § 217.12(1)(A), (1)(B), (1)(C), (4), (6)(A), (6)(H).
8. The Board is authorized to revoke Ms. Mauney's license. TEX. OCC. CODE § 301.453.

SIGNED July 26, 2010.



PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS