



DOCKET NUMBER 507-10-1302

IN THE MATTER OF PERMANENT
CERTIFICATE NO.168402
ISSUED TO MADELINE M. GORDON

§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: MADELINE M. GORDON
1122 SANTA FE TRAIL
GRAND PRAIRIE, TX 75052

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 22-23, 2010, the Board considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendations that the Board adopt the PFD regarding the license of Madeline M. Gordon to practice nursing in Texas 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. Further, all proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

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.
Sarah G. Ramos
Executive Director of the Board

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 168402, previously issued to MADELINE M. GORDON, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 168402, previously issued to MADELINE M. GORDON, 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 vocational nursing in the State of Texas.

Entered this 2nd day of April, 2010.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-10-1302 (February 3, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 3, 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. 507-10-1302; IN THE MATTER OF PERMANENT
CERTIFICATE NO. 168402 ISSUED TO MADELINE M. GORDON**

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 that reads "Sarah G. Ramos".

Sarah G. Ramos
Administrative Law Judge

SGR:cm

Enclosures

XC: R. Kyle Hensley, Staff Attorney, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Carol Pepper, Legal Assistant, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD(s); Certified Evidentiary Record) – **VIA INTER-AGENCY**
Madeline M. Gordon, 1122 Santa Fe Trail, Grand Prairie, Texas 75052 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-1302

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 168402	§	OF
	§	
ISSUED TO MADELINE M. GORDON	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Madeline J. Gordon, Respondent, pled guilty to unlawfully obtaining a controlled substance, and the staff (Staff) of the Texas Board of Nursing (Board) brought this action seeking revocation of her nurse's license. The hearing on the merits was held on January 20, 2010. Respondent failed to appear, and Staff moved for a default decision. In support of its motion, Staff offered proof that proper notice of the hearing had been provided.

The Administrative Law Judge (ALJ) grants Staff's motion for default and deems Staff's allegations to be true. The deemed facts support Staff's recommended penalty; accordingly, the ALJ recommends that Respondent's license be revoked.

I. FINDINGS OF FACT

1. Madeline M. Gordon holds permanent nurse license number 168402 issued by the Texas Board of Nursing (Board).
2. On May 22, 2009, the staff of the Board (Staff) sent formal charges to Respondent by certified mail to her official address on record with the Board.
3. As indicated by the certified mail return receipt, Respondent signed for and received the formal charges on June 3, 2009.
4. On November 16, 2009, Staff sent its notice of hearing to Respondent by certified mail to her official address on record with the Board.
5. As indicated by the certified mail return receipt, Respondent signed for and received the notice of hearing on November 27, 2009.
6. The notice of hearing stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.

7. The notice of hearing also stated, in at least 12-point bold-faced font, that “[f]ailure 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.”
8. The hearing on the merits convened at 9:00 a.m. on January 20, 2010, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.
9. Staff appeared at the hearing through its Assistant General Counsel, R. Kyle Hensley. Respondent did not appear and was not represented at the hearing.
10. Staff moved for default and offered evidence demonstrating jurisdiction and proper notice.
11. The allegations in the notice of hearing are deemed true.
12. On or about November 13, 2006, while employed with Parkland Health and Hospital System, Dallas, Texas, Respondent attempted to obtain Phentermine from the Minyard Pharmacy, Dallas, Texas, under her own name, through the use of a fraudulent oral or telephonically communicated prescription, using the name and Drug Enforcement Agency number assigned to Lisa Scarvey, M.D.
13. Respondent’s conduct was likely to deceive the pharmacy.
14. Possession of Phentermine through use of an unauthorized, fraudulent telephonically communicated prescription is prohibited by TEX. HEALTH AND SAFETY CODE ANN. ch. 481 (the Controlled Substances Act).
15. On or about October 10, 2008, in the 282nd Judicial District Court of Dallas County, Texas, under Cause No. F-06-89615-S, Respondent entered a plea of guilty to unlawfully obtaining from a legally registered pharmacist, a controlled substance, to wit: Phentermine $\frac{3}{4}$ (a Third Degree Felony offense committed on November 13, 2006).
16. As a result of the guilty plea described in Finding of Fact No. 15, proceedings against Respondent were deferred, an adjudication of guilt was not entered, and Respondent was placed on Community Supervision for a period of five years and ordered to pay a fine and court costs.

II. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ANN. 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 ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. ch. 2001; 22 TEX. ADMIN. CODE § 213.10.
4. Because of Respondent'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 appropriately deemed to be true. 1 TEX. ADMIN. CODE § 155.501.
5. Respondent's attempted possession of Phentermine through the use of a falsified, unauthorized, and fraudulent oral or telephonically communicated prescription as described in Finding of Fact Nos. 12-14 is prohibited by TEX. HEALTH AND SAFETY CODE ANN. ch. 481, constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE ANN. §301.452(b)(10), and is a violation of 22 TEX. ADMIN. CODE § 217.12(10)(E) and (11)(B).
6. Respondent's conduct as described in Finding of Fact No. 15 constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE ANN. § 301.452(b)(3) & (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 ANN. § 301.453.

SIGNED February 3, 2010.



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS