

DOCKET NUMBER 507-10-1300



IN THE MATTER OF PERMANENT
CERTIFICATE NO. 713310
ISSUED TO
ANITA MAXINE MITCHELL

§
§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

Patricia R. Norman
Executive Director of the Board

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.

OPINION AND ORDER OF THE BOARD

TO: ANITA MAXINE MITCHELL
11303 CRESCENT PEAK
SAN ANTONIO, TX 78245

ROY G. SCUDDAY
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 Anita Maxine Mitchell 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.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 713310, previously issued to ANITA MAXINE MITCHELL, to practice registered nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 713310, previously issued to ANITA MAXINE MITCHELL, 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 registered nursing in the State of Texas.

Entered this 23rd day of April, 2010.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-10-1300 (February 9, 2010).



State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 9, 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

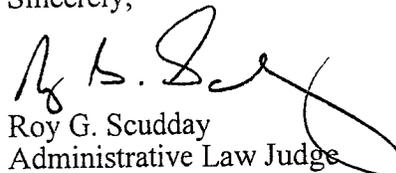
**RE: Docket No. 507-10-1300, In the Matter of Permanent Certificate
No. 713310 Issued to Anita Maxine Mitchell**

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,


Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosures

XC: R. Kyle Hensley, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA INTER-AGENCY**
Dina Flores, Legal Assistant, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**
Elizabeth Higginbotham, Higginbotham & Associates, LLC, One Castle Hills, 1100 NW Loop 410, Suite 500, San Antonio, TX 78213-**VIA REGULAR MAIL**
Anita M. Mitchell, RN, 11303 Crescent Peak, San Antonio, TX 78245-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-1300

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
CERTIFICATE NO. 713310 ISSUED TO	§	OF
ANITA MAXINE MITCHELL	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Anita Maxine Mitchell (Respondent) seeking to revoke Respondent's license as a registered nurse pursuant to TEX. OCC. CODE ANN. (Code) § 301.452(b). The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On January 27, 2010, Elizabeth L. Higginbotham, attorney of record for Respondent, filed an Unopposed Motion for Withdrawal of Counsel in this case. The Motion did not indicate that a copy had been sent to Respondent, nor did it provide a mailing address and telephone number of Respondent as required by 1 TEX. ADMIN. CODE (TAC) § 155.201(e). The Motion was denied at the hearing on February 4, 2010.

The hearing convened on February 4, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel, who moved for a default based on the failure of Respondent or her attorney to appear.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TAC § 155.501, the ALJ granted Staff's motion for default and recommends that Respondent's registered nursing license be revoked.

III. FINDINGS OF FACT

1. Anita Maxine Mitchell (Respondent) is licensed as a registered nurse and holds License No. 713310 issued by the Texas Board of Nursing (Staff/Board).
2. On November 30, 2006, Staff notified Respondent that it was initiating an investigation of charges against Respondent.
1. On January 5, 2007, Staff again notified Respondent that it was initiating an investigation of charges against Respondent.
4. On April 14, 2009, Staff notified Respondent of the Formal Charges that had been filed against her.
5. On November 16, 2009, Staff mailed its Notice of Hearing to Respondent c/o Elizabeth Higginbotham, Attorney, 1100 NW Loop 410, Suite 500, San Antonio, Texas 78213 by United States Post Office certified mail. Receipt of the certified mailing was signed for on behalf of Respondent. On January 25, 2010, Staff mailed its First Amended Notice of Hearing and First Amended Formal Charges to Respondent's attorney to the same address.
6. 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.
7. The notice of hearing contained the following language in capital letters in at least 12-point boldface type: "FAILURE TO APPEAR AT THE SCHEDULED HEARING IN PERSON OR BY LEGAL REPRESENTATIVE, REGARDLESS OF WHETHER AN APPEARANCE HAS BEEN ENTERED, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FIRST AMENDED FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT."
8. Respondent did not appear and was not represented at the hearing, and the factual allegations set forth in the First Amended Formal Charges were deemed admitted.

9. On or about November 29, 2005, Respondent entered a plea of Nolo Contendere to Possession of a Controlled Substance Penalty Group 1 < 1 gram, a State Jail Felony offense committed on September 27, 2005, in Cause Number 2005-CR-8266W in the 144th District Court of Bexar County, Texas. The proceedings against Respondent were deferred, without entering an adjudication of guilt, and Respondent was placed on Community Supervision for a period of three years and ordered to pay a fine, restitution, and court costs. Furthermore, Respondent was ordered to attend Alcoholics Anonymous (AA) three times a week; participate in outpatient treatment at the Center for Health Cares Services (CFHCS); attend Narcotics Anonymous (NA) three times a week; participate in the Treatment Alternative to Incarceration Program (TAIP), beginning November 29, 2005; and notify employer (Methodist Hospital) of case disposition and that she is on probation.
10. On or about July 26, 2008, a Judgment Adjudicating Guilt was entered and Respondent was subsequently convicted of the Possession of a Controlled Substance offense in Cause Number 2005-CR-8266W in the 144th District Court of Bexar County, Texas. Respondent was sentenced to confinement in the Texas Department of Criminal Justice-State Jail or Institutional Division for a period of six months, and was ordered to pay a fine and court costs. Respondent was given credit for time already served with the Substance Abuse Treatment Facility (SATF) program.
11. On or about May 10, 2006, July 31, 2006, and August 28, 2006, Respondent engaged in the intemperate and/or unlawful use of cocaine. Cocaine is a prohibited substance pursuant to Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).

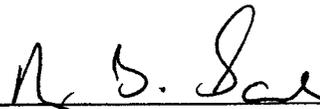
IV. CONCLUSIONS OF LAW

1. The Texas Board of Nurses (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the formal charges and of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Board had the burden of proving the case by a preponderance of the evidence.
5. The use of cocaine by a Registered 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.

6. Based on Findings of Fact No. 9 and 10, Respondent violated Code § 301.452(b)(3) and (10) and 22 TAC § 217.12(13).
7. Based on Finding of Fact No. 11 and Conclusion of Law No. 5, Respondent violated Code § 301.452(b)(9) and (10) and 22 TAC § 217.12(10)(A) and (11)(B).
8. Based upon Findings of Fact Nos. 9-11 and Conclusions of Law Nos. 5-7, the Board should revoke Respondent's registered nurse license.

SIGNED February 9, 2010.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS