

DOCKET NUMBER 507-07-1659



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. Thomas
Executive Director of the Board

IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT VOCATIONAL NURSE §
CERTIFICATE NUMBER 148262 § OF
ISSUED TO §
ELLEN HESTER HARRISON § ADMINISTRATIVE HEARINGS

ORDER OF THE BOARD

TO: ELLEN HESTER HARRISON
1036 N. MAGNOLIA STREET
ROCKPORT, TEXAS 78382

During open meeting held in Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge 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.

NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse Certificate Number 148262, previously issued to ELLEN HESTER HARRISON, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Vocational Nurse Certificate Number 148262, previously issued to ELLEN HESTER HARRISON, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

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 12th day of June, 2007.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY: 

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

SOAH DOCKET NO. 507-07-1659

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 148262	§	OF
ISSUED TO	§	
ELLEN HESTER HARRISON	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas State Board of Nurse Examiners (Staff/Board) brought this case seeking disciplinary action against Ellen Hester Harrison (Respondent), a licensed vocational nurse (LVN), by revoking the permanent certificate issued to Respondent, for violating the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. ch. 301, and the Board's rules. Despite being sent proper notice, Respondent did not appear nor was she represented at the hearing. Based on Respondent's failure to appear, Staff's allegations were accepted as true. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's permanent certificate as a LVN be revoked.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

On February 7, 2007, Respondent was served a Notice of Hearing that informed Respondent of the hearing, and included language that failure to appear at the hearing would result in Board being granted a default. On March 5, 2007, a hearing on the merits was convened before ALJ Steven M. Rivas at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Victoria Cox, Assistant General Counsel, who moved for a default based on Respondent's failure to appear. Staff offered evidence establishing jurisdiction and that appropriate notice of the hearing had been provided to Respondent. The hearing was concluded and the record closed that same day.

II. RECOMMENDATION

Staff presented its expert witness, Carol Marshall, who testified regarding the appropriate sanction. Ms. Marshall stated that Respondent's misconduct posed a danger to the public, patients,

and her employers. Staff established that, for the type of misconduct Respondent committed, Board policy requires revocation of the nursing license until Respondent shows that she is fit for licensure. Also in its notice, Staff mentions that it will seek to impose on Respondent the administrative costs of the proceeding pursuant to TEX. OCC. CODE ANN. § 301.461.¹ Based upon the following findings and conclusions, and in accordance with 1 TEX. ADMIN. CODE § 155.55, the ALJ recommends that a default be entered and that Respondent's permanent certificate as a LVN be revoked.

III. FINDINGS OF FACT

1. Ellen Hester Harrison (Respondent) is a licensed vocational nurse (LVN) who holds permanent certificate number 148262, issued by the State of Texas.
2. On October 26, 2003, through December 20, 2003, while employed with Save Home Health Care, Inc., Respondent made fraudulent entries into the medical records of a patient by forging the patient's signature.
3. On October 26, 2003, through December 20, 2003, while employed with Save Home Health Care, Inc., Respondent submitted fraudulent and falsified time, payroll, and mileage records, misappropriating more than \$13,662.78.
4. On July 29, 2005, while employed with Maxim Healthcare Services, Respondent engaged in the intemperate use of Methadone as prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substance Act). Respondent produced a urine specimen that tested positive for Methadone whose use could impair a nurse's ability to make rational, accurate, and appropriate assessments, judgments and decisions regarding patient care, thereby placing the patient in potential danger.
5. On May 5, 2006, in the 117th District Court of Nueces County, Corpus Christi, Texas, Cause Number Cr06000261B, Respondent pled guilty to theft of property, and was placed on four years probation.
6. The staff of the Texas State Board of Nurse Examiners (Staff/Board) filed formal charges against Respondent on April 3, 2006.

¹ At the hearing, Staff did not present evidence to establish the imposition of administrative costs; therefore, the ALJ will not address the issue in this proposal.

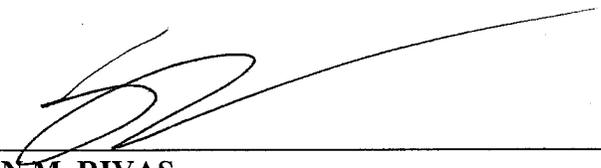
7. On April 14, 2006, Staff mailed a copy of the formal charges to Respondent by certified mail, return receipt requested, to Respondent's then known address of record: 2167 1st Street, Ingleside, Texas, 78362. It was received and signed for on April 21, 2006.
8. On November 13, 2006, Staff mailed a copy of the First Amended Formal Charges to Respondent by certified mail, return receipt requested, to Respondent's then known address of 1036 N. Magnolia Street, Rockport, Texas, 78382. It was received and signed for by Respondent on November 16 2006.
9. On February 7, 2007, Staff sent a notice of hearing to Respondent by certified mail, return receipt requested, to Respondent's then known address as described in Findings of Fact No. 8. It was received and signed for by Respondent on February 9, 2007.
10. 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.
11. The notice of hearing contained the following language in capital letters in 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."
12. On March 5, 2007, the Administrative Law Judge convened the hearing on the merits. Staff was represented by Victoria Cox, Assistant General Counsel. Although properly notified of the hearing, as stated in Findings of Fact No. 9, Respondent did not appear and was not represented at the hearing.
13. Staff's motion for default was granted, and Staff's factual allegations in the notice of hearing and formal charges were established as true.

IV. CONCLUSIONS OF LAW

1. The Texas State Board of Nurse Examiners (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. § 301.453.
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, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and § 301.454 of the Act.

3. Proper and timely notice was effected upon Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 22 TEX. ADMIN. CODE (TAC) §§ 213.10 and 213.22.
4. A default is authorized pursuant to 1 TAC § 155.55.
5. Based on Findings of Fact No. 2, Respondent violated § 302.402(a)(1) of the Act, and 22 TAC § 239.11(4).²
6. Based on Findings of Fact No. 3, Respondent violated § 302.402(a)(10) of the Act and 22 TAC § 239.11(1) and (4).³
7. Based on Findings of Fact No. 4, Respondent was in violation of § 301.452(b)(3) and (10) of the Act and 22 TAC § 217.12(10)(A) and (10)(D).
8. Based on Findings of Fact No. 5, Respondent was in violation of § 301.452(b)(3) and (10) of the Act and 22 TAC § 217.12(13).
9. The Board is authorized to take disciplinary action against the Respondent, including revocation, pursuant to § 302.402 and §301.453 of the Act.
10. Pursuant to § 301.453 of the Act, Respondent's permanent certificate as a LVN in the State of Texas should be revoked.

SIGNED May 3, 2007.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

² Repealed on February 1, 2004 and now located in §301.452 and 22 TAC § 217.12.

³ *Id.*