

DOCKET NUMBER 507-08-0783

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 637537
ISSUED TO
NORMAN W. McGUIRE

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§

BEFORE THE TEXAS
BOARD OF NURSING



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.
Norman W. McGuire
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: Norman W. McGuire
Rt. 1, Box 433A
Eufaula, OK 74432

During open meeting held in Austin, Texas April 17-18, 2008, the Texas Board of Nursing 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 Texas Board of Nursing, 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 with the exception of Conclusion of Law Number 6. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 6 is hereby re-designated as a Recommendation because it is a recommendation for a sanction and therefore not a proper conclusion of law. *Chalifoux Jr. V. State Bd. Of Medical Examiners*, 2006 S.W.3d (03-05-00320-CV) (Tex.App. – Austin 2006); *Grotti v. State Bd. Of Medical Examiners*, 2005 LEXIS 8279 (Tex.App. –Austin 2005, no pet.). The Board adopts the Recommended Sanction of ENFORCED SUSPENSION.

IT IS THEREFORE ORDERED, subject to ratification by the Board of Nurse Examiners, that License Number 637537, previously issued to NORMAN WESSLEY MCGUIRE, to practice professional nursing in Texas is hereby SUSPENDED and said suspension is enforced until Respondent completes a forensic psychological evaluation performed by a Board certified psychiatrist or a clinical psychologist approved by the Board.

IT IS FURTHER ORDERED that Permanent Certificate Number 637537 previously issued to NORMAN WESSLEY MCGUIRE, 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 multistate privilege, if any, to practice professional nursing in compact states.

IT IS FURTHER ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER ORDERED that RESPONDENT SHALL undergo a psychological evaluation. The evaluation shall be performed by a Board certified psychiatrist or a clinical psychologist approved by the Board. The evaluation shall be completed within ninety (90) days from the date of this Order. RESPONDENT SHALL CAUSE the performing psychiatrist or clinical psychologist to send a report of the evaluation to the Board office. The report shall include:

1. a description of the instruments used for evaluation and the results of the evaluation;
2. a statement as to the RESPONDENT's fitness to safely practice professional nursing; and
3. recommendations for therapy or other follow-up.

RESPONDENT SHALL comply with the recommendations for therapy or other follow-up. If the evaluation states that Respondent lacks fitness to practice professional nursing, RESPONDENT SHALL cease to provide direct patient care until such time that the same evaluator deems Respondent safe to return to direct patient care. If the results of the evaluation reveal further violations of the Nursing Practice Act, further disciplinary action may be taken, including revocation of Respondent's license to practice professional nursing in the State of Texas.

IT IS FURTHER ORDERED that RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT is dismissed from therapy.

IT IS FURTHER ORDERED, upon verification of successful completion of the psychological evaluation performed by a Board certified psychiatrist or a clinical psychologist:

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and be issued a license to practice professional nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars (\$250). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

(4) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: <http://www.bne.state.tx.us/about/stipscourses.html>.*

IT IS FURTHER ORDERED, SHOULD RESPONDENT PRACTICE AS A REGISTERED NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING

PROBATION CONDITIONS FOR TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(5) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(7) For the first year of employment as a Registered Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse. Direct supervision requires another professional nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency.

RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for two (2) year(s) of employment as a nurse.

IT IS FURTHER ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing for the State of Texas does hereby ratify and adopt this Order and said Order is final.

Entered this 17th day of April, 2008.

TEXAS BOARD OF NURSING

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

SOAH DOCKET NO. 507-08-0783

IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE NO. 637537 §
ISSUED TO § OF
NORMAN W. MCGUIRE § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Board of Nursing (Staff/Board) brought disciplinary action against Norman W. McGuire (Respondent) pursuant to TEX. OCC. CODE ANN. (Code) § 301.452(b)(8), in that Respondent's license to practice professional nursing in the State of Oklahoma was revoked for a period of five years. Staff also sought to impose against Respondent administrative costs of the proceeding pursuant to Code § 301.461. The Administrative Law Judge (ALJ) recommends that Respondent's license be suspended, and that administrative costs not be imposed on Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened February 7, 2008, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Victoria Cox, Assistant General Counsel. Respondent appeared *pro se*. The record closed that day at the conclusion of the hearing.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. REASONS FOR DECISION

A. Background

Respondent is licensed as a registered nurse. On May 24, 2007, Staff sent Respondent notice of Formal Charges that had been filed against Respondent. On November 16, 2007, Staff sent Respondent a Notice of Hearing.

B. Staff's Allegation

Staff's allegation is that Respondent's license to practice professional nursing in the State of Oklahoma was summarily suspended on January 26, 2006, and revoked by default for a period of five years on July 26, 2006, by the Oklahoma Board of Nursing. Staff alleges that such action in Oklahoma serves as the basis for disciplinary action against Respondent pursuant to Code § 301.452(b).

C. Evidence

Staff submitted multiple exhibits and provided testimony of Kevin G. Freemyer, an Investigator for the Board, and Carol Marshall, Nursing Practice Consultant for the Board. Respondent testified on his own behalf.

1. Undisputed Facts

On October 8, 1996, Respondent was issued an Eligibility Order by the Board declaring Respondent conditionally eligible for licensure as a registered nurse in the State of Texas.¹ Respondent was licensed to practice professional nursing in the State of Texas on February 4, 1997.

On January 3, 2006, the Oklahoma Board of Nursing issued an Order of Emergency Suspension Pending Hearing based on a complaint filed against Respondent that his conduct jeopardized patients' lives, health, or safety.² On July 26, 2006, the Oklahoma Board of Nursing issued an Order of Revocation with Conditions based on Respondent's failure to appear at the hearing to answer the charges filed against him. The Order of Revocation revoked Respondent's license to practice registered nursing for a period of five years. The Order of Revocation further provided that, prior to reinstatement, Respondent would successfully complete a course on Nursing Jurisprudence;

¹ Ex. No. 8

² Ex. No. 6

a course on Critical Thinking, to include moral reasoning; a course on Physical Assessment; a course on Medical Administration, to include controlled dangerous substances; a course on Nursing Ethics, to include professional boundaries; and a course on Patient Rights and Confidentiality; as well as pay an administrative penalty of \$1,000.³

2. Carol Marshall's Testimony

Ms. Marshall has been a Registered Nurse for 28 years with experience in diverse areas including critical care, outpatient/observation, surgery, long-term acute care, nurse aide testing, and regulation. As a Nurse Practicing Consultant for the Board since 2000, Ms. Marshall assists the Enforcement and Legal Divisions with case reviews and testifies as an expert witness in SOAH hearings. Ms. Marshall testified that in situations where a nursing board of another jurisdiction has taken disciplinary action against a person licensed in Texas, the Board's policy is to either revoke the license to practice nursing in Texas or issue an enforced suspension with conditions similar to that of the other jurisdiction.

3. Respondent's Testimony

Respondent testified that he has been a registered nurse since 1995, and until the events leading up to the Oklahoma proceedings had never been found to have endangered the health or safety of a patient. In reference to the proceeding resulting in the revocation of his Oklahoma license, Respondent testified that he did not commit the alleged acts, but did not choose to fight the charges, and had no intention to practice nursing again in Oklahoma.

³ Ex. No. 7.

D. Analysis and Recommendation**1. Legal Standards**

Code Chapter 301 is the Nursing Practice Act (the Act) that regulates professional and vocational nurses. Code § 301.452(b)(8) provides that a person is subject to denial of a license or disciplinary action for "revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction."

2. Specific Allegations

It is undisputed that Respondent's license to practice nursing in Oklahoma was revoked. For whatever reason, Respondent chose not to fight that action and did not appear at the hearing in Oklahoma. Accordingly, Staff has shown by a preponderance of the evidence that Respondent is subject to disciplinary action pursuant to Code § 301.452(b)(8).

3. Recommended Sanctions

Staff seeks to impose either enforced suspension or secure revocation of Respondent's license. Conditions for enforced suspension could include undergoing a psychological evaluation, participation in therapy with a professional counselor, compliance with the Nursing Practice Act, paying all re-registration fees, completing a course in Texas jurisprudence and ethics, working as a registered nurse for a probationary period of two years, notifying each employer of the probation conditions, causing each employer to submit a Notification of Employment form to the Board, being directly supervised by a Registered Nurse for the first year of employment, being supervised by a Registered Nurse for the remainder of the probationary period, and causing each employer to submit period reports as to Respondent's capability to practice nursing.⁴ Respondent's response is that he agrees to certain conditions for suspension, including the psychological evaluation, and payment of

⁴ Ex. No. 10

the fees, but he disagrees that he should be required to complete a course in Texas jurisprudence and ethics, work under the direct supervision of a registered nurse, or require his employers to submit reports to the Board.

A license to practice nursing is a privilege, not a right. The revocation of Respondent's license in Oklahoma necessarily calls into question his ability to fulfill the duties and obligations of a registered nurse. The suggested conditions appear to be entirely consistent with the concern of the Board that Respondent be able to fulfill those conditions and duties. Accordingly, it appears that the proper sanction would be an enforced suspension of the license with the conditions suggested in the proposed Exhibit No. 10. This would accomplish the goal of protecting the health, welfare, and safety of Respondent's patients, but still allow him to provide needed services to his community.

III. FINDINGS OF FACT

1. Norman W. McGuire, RN (Respondent), holds License Number 637537 issued by the Texas Board of Nurse Examiners for the State of Texas (Board/Staff).
2. On May 24, 2007, Staff sent Respondent notice that it had filed Formal Charges against Respondent. On November 16, 2007, Staff sent Respondent a Notice of Hearing.
3. 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.
4. The hearing on the merits was held on February 7, 2008, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties appeared and participated in the hearing. The record closed on that date.
5. On January 3, 2006, the Oklahoma Board of Nursing issued an Order of Emergency Suspension Pending Hearing based on a complaint filed against Respondent that his conduct jeopardized patients' lives, health, or safety.
6. On July 26, 2006, the Oklahoma Board of Nursing issued an Order of Revocation with Conditions based on Respondent's failure to appear at the hearing to answer the charges filed

against him, revoking Respondent's license to practice registered nursing for a period of five years and pay an administrative penalty of \$1,000.

7. The Order of Revocation further provided that prior to reinstatement, Respondent would successfully complete courses on Nursing Jurisprudence; Critical Thinking, to include moral reasoning; Physical Assessment; Medical Administration, to include controlled dangerous substances; Nursing Ethics, to include professional boundaries; and Patient Rights and Confidentiality.
8. Staff offered no evidence in support of the imposition on Respondent of the administrative costs of this proceeding pursuant to Code § 301.461.

IV. CONCLUSIONS OF LAW

1. The State Board of Nurse Examiners for the State of Texas (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 1 TEX. ADMIN. CODE § 155.41(b).
5. Based on Findings of Fact Nos. 5 - 7, Respondent is subject to disciplinary action pursuant to Code § 301.452(b)(8).
6. Based upon Findings of Fact Nos. 5 - 7 and Conclusion of Law Nos. 5, the Board should impose an enforced suspension on Petitioner that could include any or all of the following conditions: undergoing a psychological evaluation, participation in therapy with a professional counselor, comply with the Nursing Practice Act, pay all re-registration fees, complete a course in Texas jurisprudence and ethics, work as a registered nurse for a probationary period of two years, notify each employer of the probation conditions, cause each employer to submit a Notification of Employment form to the Board, be directly supervised by a Registered Nurse for the first year of employment, be supervised by a Registered Nurse for the remainder of the probation period, and cause each employer to submit period reports as to Respondent's capability to practice nursing.

7. Based upon Finding of Fact No. 8, administrative costs of this proceeding should not be imposed on Respondent.

SIGNED February 13, 2008.



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