

DOCKET NUMBER 507-08-2729

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 179937
ISSUED TO
VICTOR RODRIGUEZ

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS



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

ORDER OF THE BOARD

TO: Victor Rodriguez
9726 Boonsboro Dr
San Antonio, TX 78245

During open meeting held in Austin, Texas, 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. 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 Certificate Number 179937, previously issued to VICTOR RODRIGUEZ, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 179937, previously issued to VICTOR RODRIGUEZ, 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 9 day of September, 2008.

TEXAS BOARD OF NURSING

BY:



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

SOAH DOCKET NO. 507-08-2729

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
CERTIFICATE NO. 179937 § OF
ISSUED TO VICTOR RODRIGUEZ § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Board of Nursing (Staff/Board) brought this action seeking to revoke the vocational nurse's license of Victor Rodriguez (Respondent) based on allegations concerning his prior criminal history, failure to accurately report information on his license renewal application, and lack of fitness to practice vocational nursing due to the intemperate use of controlled substances. Despite being sent proper notice, Respondent failed to appear at the hearing on the merits, which convened on June 12, 2008. Based on Respondent's failure to appear, Staff moved for default, which was granted by the Administrative Law Judge (ALJ) upon proof of proper notice and jurisdiction. Pursuant to the default, the allegations in Staff's notice of hearing were accepted as true, establishing the alleged violations. Based on the Findings of Fact and Conclusions of law set forth below, the ALJ agrees with Staff's recommendation that Respondent's vocational nurse license be revoked.

I. FINDINGS OF FACT

1. Victor Rodriguez (Respondent), a vocational nurse licensed by the State of Texas, currently holds license number 179937 issued by the Texas Board of Nursing (Board).
2. On March 28, 2001, Respondent was licensed to practice vocational nursing in the State of Texas.
3. On August 2, 2002, in Bexar County, Texas, Respondent entered a plea of "nolo contendere" in Cause No. 816013, and was convicted of the Class B misdemeanor offense of Driving While Intoxicated based on an incident that occurred on April 27, 2002. Respondent was sentenced to four months jail but that sentence was suspended; he was placed on probation for a period of ten months.

4. On May 27, 2003, Respondent submitted a license renewal form to the Board on which he falsely answered "no" to the question, "Were you convicted of a misdemeanor other than a minor traffic violation since your last renewal?"
5. On January 13, 2005, Respondent was arrested for the Class A misdemeanor offense of Assault Causing Bodily Injury – Married based on an offense committed in Bexar County, Texas, on March 12, 2004.
6. On April 3, 2005, Respondent provided false, deceptive, or misleading information on the Texas Online Renewal Document that he submitted to the Board by answering "no" to the following question: "Have you been convicted, adjudged guilty by court, plead guilty, no contest, or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed including any pending criminal charges or unresolved arrest (excluding minor traffic violations) since the last renewal?"
7. On May 26, 2005, in Bexar County, Texas Cause No. 911871, Respondent entered a plea of "nolo contendere" to the Class A misdemeanor offense of Assault – Causing Bodily Injury – Married, based on an incident that occurred on March 12, 2004. The Court deferred entry of an adjudication of Respondent's plea and placed him on probation for a term of one year.
8. On August 22, October 31, December 23, 2005, and January 27, February 6, February 14, and April 10, 2006, motions were filed for entry of an adjudication of guilt and revocation of Respondent's probation in Cause No. 911871 based on substantial violations of the terms and conditions of his probation.
9. On November 3, 2005, in Cause No. 911871, Respondent's conditions of probation were altered and amended to include requirements that he: comply with all program directives of Alcohol/Drug Counseling or Evaluation, comply with all program directives of the Treatment Alternatives to Incarceration Program, report weekly for 90 days to Intensive Supervision Probation, and submit to a period of detention in the Bexar County Jail for a period of three days.
10. On April 20, 2006, in Bexar County Texas, in Cause No. 954326, Respondent pled "nolo contendere" to the Class A misdemeanor offense of Terroristic Threat of Family/Household based on a November 2005 incident. The Court deferred an adjudication of guilt on Respondent's plea and placed him on probation for a period of 11 months.
11. On April 21, 2006, the Bexar County Court at Law No. 7 entered an order extending Respondent's probation in Cause No. 911871 from May 26, 2006, to November 26, 2006.
12. On May 11, 2006, the Bexar County Court at Law No. 7 entered an order in Cause No. 911871 requiring Respondent to report to/apply for Alcohol and Drug Counseling or evaluation, comply with all program directives of the Treatment Alternatives to Incarceration Program, and be reinstated into the Kilday Counseling Program.

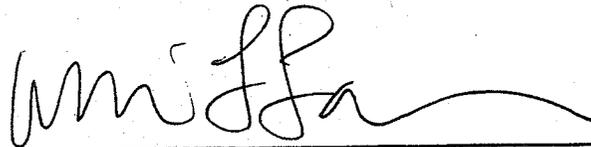
13. On July 21, 2006, a motion was filed seeking to have the Court enter an adjudication of guilt against Respondent and revoke his probation under Cause No. 911871, based on substantial violations of the terms and conditions of his probation including his commission of the offense of Driving While License Invalid on July 17, 2006, illegally using cocaine on May 3, 11, and 26, 2006, and consuming alcoholic beverages on June 8, 2006.
14. On August 7, 2006, Respondent's probation in Cause No. 911871 was revoked based on Respondent's substantial violations of the terms and conditions of probation. Respondent was convicted of the Class A misdemeanor of Assault Causing Bodily Injury – Married and was sentenced to confinement in the Bexar County Jail for a period of 300 days and ordered to pay a fine and court costs.
15. On August 7, 2006, Respondent's probation in Cause No. 954326 was revoked based on Respondent's substantial violations of the terms and conditions of probation. Respondent was convicted of the Class A misdemeanor of Terroristic Threat of Family/Household and was sentenced to confinement in the Bexar County Adult Detention Center for a period of ten months and ordered to pay a fine and court costs.
16. On August 7, 2006, in Bexar County Cause No. 955328, Respondent pled guilty to and was convicted of Driving While Intoxicated – 2nd offense and was sentenced to confinement in the Bexar County Adult Detention Center for a period of ten months and ordered to pay a fine and court costs.
17. On August 7, 2006, in Wilson County, Texas, Cause No. 973478, Respondent pled guilty to and was convicted of the Class B misdemeanor offense of Driving While License Invalid and was sentenced to confinement in the Wilson County Jail for 30 days with credit for 30 days served and ordered to pay a fine, restitution, and court costs.
18. On August 10, 2006, while re-applying for employment as a licensed vocational nurse at Baptist Health Care Systems in San Antonio, Texas, Respondent engaged in the intemperate use of EDDP, Methadone, and Norpropoxyphene as evidenced by the results of his pre-employment drug screen requested by Baptist Health System.
19. The use of EDDP, Methadone, or Norpropoxyphene by a licensed vocational nurse while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms, or changes in a 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 patients in potential danger.
20. On August 30, 2006, while employed as a licensed vocational nurse with Baptist Health Care Systems in San Antonio, Texas, Respondent lacked the fitness to practice vocational nursing in that he had slurred speech, was falling asleep, and was unable to complete a report.

21. Respondent's condition on August 30, 2006, could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing patients in potential danger.
22. On November 27, 2007, Staff of the Board (Staff) sent via certified mail, its formal charges to Respondent at his last known official address of record.
23. On April 28, 2008, Staff sent via certified mail, its Notice of Hearing to Respondent at his last known official address of record. Respondent received the Notice of Hearing on May 5, 2008, as evidenced by his signature on the certified mail return receipt.
24. Staff's formal charges and Notice of Hearing were sent to Respondent at 9726 Boonsboro Drive, San Antonio, Texas 78245, Respondent's last known address of record on file with the Board.
25. 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.
26. The notice of hearing contained the following language in capital letters in 12-point or larger 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."
27. The hearing on the merits was convened at 9:00 a.m. on June 12, 2008, in a fourth floor hearing room of the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.
28. Staff appeared at the hearing through its assistant general counsel, Victoria Cox. Respondent did not appear and was not represented at the hearing. Respondent did not file a continuance or provide any explanation for his failure to appear.
29. Upon proof of jurisdiction and proper notice, Staff's motion for default was granted, and the allegations in its notice of hearing were deemed true.

II. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. §§ 301.451 through 301.555.
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.
3. The Board's rules authorize service of notice by sending it to Respondent's last known address as reflected in the Board's records. 22 TEX. ADMIN. CODE § 213.10(a).
4. 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 § 213.10.
5. Based on the above Findings of Fact and Conclusions of Law, Respondent is subject to discipline by the Board, including revocation of his license. TEX. OCC. CODE ANN. §§ 301.452, 301.453, and 22 TEX. ADMIN. CODE § 217.12
6. Based on Respondent's failure to appear despite being provided proper notice, default is appropriate and the allegations in Staff's notice of hearing are deemed true. 1 TEX. ADMIN. CODE § 155.55.
7. The Board should enter a default order against Respondent and should revoke Respondent's vocational nurse's license number 179937.

SIGNED August 4, 2008.



AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS