

DOCKET NO. 507-99-0838

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE §
NUMBER 597084 ISSUED TO § **OF**
JACKIE LYNN JOHNSTON (Stovall) §
§ **ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Staff of the Board of Nurse Examiners (the Board) brought this case seeking disciplinary action against Jackie Lynn Johnston (Stovall) (Respondent). The Staff requested that Respondent's permanent certificate be revoked. This proposal recommends a default judgment be entered against Respondent and Respondent's permanent certificate be revoked as requested by the Staff.

I. Background

On July 27, 1999, a hearing was convened before Henry D. Card, Administrative Law Judge (ALJ), at the hearings facility of the State Office of Administrative Hearings in the Stephen F. Austin Building in Austin, Texas. The Staff was represented by James W. Johnston. Respondent did not appear and was not represented at the hearing.

The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law.

II. Recommendation

The ALJ recommends that a default judgment be entered and that Respondent's permanent certificate be revoked based on the Findings of Fact and Conclusions of Law presented below.

III. Findings of Fact

1. Respondent, a nurse licensed by the State of Texas, holds permanent certificate number 597084.
2. The Board filed amended formal charges against Respondent on March 25, 1999.
3. On March 29, 1999, the Board mailed a copy of the charges to Respondent by certified mail, return receipt requested, at her address of record: P.O. Box 322; Granbury, Texas 76048. The certified letter was returned unclaimed.
4. On May 13, 1999, the Board mailed notice of the hearing to Respondent by certified mail, return receipt requested, at her address of record. The certified letter was returned unclaimed.
5. 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.
6. 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.

7. Respondent did not appear and was not represented at the hearing.
8. The Staff filed a motion for default judgment.
9. The formal charges, which were set forth in the notice of hearing, contained the following allegations:

CHARGE I.

On or about August 21, 1995, while employed [at] All Saints Health System, Fort Worth, Texas, Respondent withdrew Meperidine Inj. 100mg from the Pyxis System for the following patients but failed to document the administration in the 7 Day Medication Summary.

DATE/TIME	AMOUNT	PATIENT
8/21/95 at 1652	100 mg Demerol	23341104
8/21/95 at 2119	100 mg Demerol	23341104
8/21/95 at 1558	100 mg Demerol	30623202
8/21/95 at 1941	100 mg Demerol	30623202
8/21/95 at 1652	100 mg Demerol	30795002
8/21/95 at 1847	100 mg Demerol	30795002

CHARGE II.

Respondent, while employed at the aforementioned facility, on or about August 22, 1995, engaged in the intemperate use of meperidine. Respondent produced a specimen for a drug screen which tested positive for meperidine. Possession of meperidine is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act). Meperidine is a controlled substance and the use of meperidine by a registered nurse, while subject to duty or call, could endanger patients.

CHARGE III.

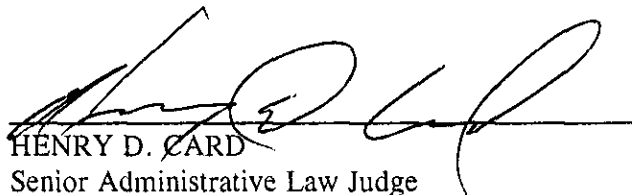
On or about September 16, 1996, Respondent passed an unauthorized prescription for Pethidine to Bill Vincent's Pharmacy, Weatherford, Texas, in that she used a prescription written for

Patient DS, in order to obtain the controlled substance for her own personal use. Respondent was indicted for the offense of Fraud (Section 481.129 of the Health and Safety Code), entered a plea of guilty, and received deferred adjudication for four (4) years beginning August 26, 1998.

IV. Conclusions of Law

1. The Board has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525 (Vernon Supp. 1999).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon Supp. 1999).
3. Proper and timely notice was effected upon Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon Supp. 1999) and 22 TEX. ADMIN. CODE (TAC) §§213.10 AND 213.22.
4. The allegations contained in the Board's formal charges are deemed admitted as true pursuant to 1 TAC §155.55.
5. Respondent's actions violated TEX. REV. CIV. STAT. ANN. art. 4525(b)(8) and (9) and 22 TAC §§217.13(1), (5), and (16).
6. Respondent's action warrants revocation of her permanent certificate, considering the factors set out in 22 TEX. ADMIN. CODE §213.33.
7. Respondents' permanent certificate should be revoked pursuant to TEX. REV. CIV. STAT. ANN. art. 4525 (Vernon Supp. 1999).

SIGNED this 13th day of September, 1999.


HENRY D. CARD
Senior Administrative Law Judge
State Office of Administrative Hearings

DOCKET NO. 507-99-0838

IN THE MATTER OF	§	BEFORE THE
	§	
PERMANENT CERTIFICATE	§	
NUMBER 597084	§	
	§	BOARD OF NURSE EXAMINERS
ISSUED TO	§	
JACKIE LYNN JOHNSTON (Stovall)	§	
	§	FOR THE STATE OF TEXAS

ORDER OF THE BOARD

TO: JACKIE LYNN JOHNSTON (Stovall)
P.O. Box 322
Granbury, Texas 76048

During open meeting at 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 the Certificate Number 597084 previously issued to JACKIE LYNN JOHNSTON (Stovall) to practice professional nursing in the State of Texas is hereby REVOKED. Respondent shall comply in all

respects with the Nursing Practice Act, TEX. REV. CIV. STAT. ANN., as amended, art. 4513 *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.

IT IS FURTHER ORDERED that Permanent Certificate Number 597084, previously issued to JACKIE LYNN JOHNSTON (Stovall), upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

Entered this 28th day of October, 1999.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY: 
Katherine A. Thomas, M.N., R.N.
Executive Director on behalf of said Board