

DOCKET NO. 507-95-0179

IN THE MATTER OF	§	BEFORE THE
	§	
PERMANENT CERTIFICATE	§	
NUMBER 556877	§	STATE OFFICE OF
ISSUED TO	§	
	§	
RITA GAYLE JOHNSON	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Board of Nurse Examiners for the State of Texas ("Staff") initiated this proceeding seeking disciplinary action against the license of Rita Gayle Johnson ("Respondent"), a registered nurse, for using butalbital, morphine, and opiates while on duty; for misappropriating medications; for falsifying information on her application for employment with a hospital; and for leaving a nursing assignment without notifying her supervisor. The licensee did not attend the hearing. The Staff recommended Respondent's license be revoked. This proposal agrees with the Staff's recommendation.

I. Procedural History

On November 7, 1994, the Staff filed formal charges against Rita Gayle Johnson, alleging that Respondent was tested for drugs while on duty, on October 17, 1991, and July 1, 1993, and was found to have butalbital and morphine in her system on October 17, 1991, and tylenol with codeine, an opiate, on July 1, 1993. The Staff also alleged Respondent falsified information on her employment application with Chillicothe Hospital, and left her nursing assignment at Chillicothe Hospital on July 1, 1993, without notifying her supervisor. The Staff alleged that the Respondent's actions were in violation of TEX. REV. CIV. STAT. ANN. art. 4525 (b)(8) and (9), and 22 TAC §217.13 (13), (15), and (17), warranting disciplinary action against the Respondent's license.

The hearing began on March 8, 1995, in the William Clements Building, 300 West 15th Street, Austin, Texas. The Board's staff was represented by Roy Rawls, Assistant General Counsel. Rita Gayle Johnson did not appear and was not represented at the hearing. The hearing was closed on March 8, 1995.

II. Jurisdiction and Notice

The Board of Nurse Examiners ("Board") has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525. The State Office of Administrative Hearings has jurisdiction over matters related to 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., Chapter 2003.

Notices of the Staff's intention to institute disciplinary action against Respondent's license, dated September 1, 1993, and September 27, 1993, were received by Respondent on September 16, 1993 and September 29, 1993, respectively. A copy of the formal charges, dated November 7, 1994, and the renote of hearing, dated January 20, 1995, were properly addressed and sent by certified mail to the Respondent at 2616 14th Street, Vernon, Texas 76384, the address reflected in the records of the Board, but were returned by the Post Office to the Staff marked "moved left no forwarding address".

The Staff's attempts to notify Respondent of the hearing upon her license comply with the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001, and with the Board's rule which states: "Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record." 22 TAC §213.10. The renote of the hearing contained a statement of the time, place and nature of the hearing, and a statement of the matters asserted, and of the legal authority and jurisdiction under which the hearing was to be held.

III. Discussion

Respondent is licensed as a professional nurse in the State of Texas and holds permanent license number 556877.

Respondent was employed as a professional nurse at Bethania Health Care Center, Wichita Falls, Texas, from January 14, 1991, to November 4, 1991.

On October 17, 1991, while Respondent was on duty in the emergency room at Bethania Health Care Center ("Bethania"), Respondent's supervisor became suspicious of Respondent's strange behavior concerning Respondent's administration of narcotics to a patient. The supervisor notified Bethania's Vice President of Nursing Services, Melinda Burdick, that something was wrong with Respondent. Bethania was conducting an investigation of possible drug use among their staff because syringes containing morphine had been found in the women's employee restroom servicing long term care and in the women's restroom servicing the emergency room. Respondent worked in both areas and was a suspect in Bethania's investigation. On October 17, 1991, Respondent was required to give a urine sample for a drug test. The sample tested positive for butalbital and morphine.

When confronted with the drug screen results, Respondent admitted she was using drugs while on duty in both the intensive care unit and the emergency room, and admitted she stole these drugs from Bethania. Bethania referred Respondent to the Texas Peer Assistance Program for Nurses (TPAPN), and terminated her from employment on November 4, 1991.

On May 10, 1993, Respondent applied for a nursing position at Chillicothe Hospital ("Chillicothe") in Chillicothe, Texas. Respondent represented in her application that she left Bethania because she "moved to Vernon", Texas. Respondent did not tell Chillicothe she was terminated from Bethania for stealing drugs from Bethania and using drugs while on duty. Chillicothe, a small rural hospital, hired Respondent on May 12, 1993.

On June 29, 1993, the pharmacy notified Chillicothe's Administrator, Linda Hall, that a pint bottle of tylenol with codeine was missing from the locked night box. Only the RNs had a key to the locked night box. As a result of the missing drugs, the Administrator conducted a random drug test. Respondent gave Chillicothe a urine sample while on duty on July 1, 1993. At 5:00 p.m. that evening, Respondent told Wanda Hall, an LVN, that she was going to her car and would be right back. Respondent, the only R.N. on duty, left the hospital, did not notify her supervisor she was leaving, and did not return to her assignment.

On July 2, 1993, Linda Hall found a note pushed under her office door from Respondent apologizing for her "secret", and suggesting she intended to commit suicide. Later that day Respondent called Linda Hall and asked to meet with her away from the hospital. When Linda Hall met with Respondent, Respondent admitted she was a drug addict, and admitted she had stolen the drugs from Chillicothe because she needed them. When the drug test was completed Respondent's urine sample tested positive for opiates.

Melinda Burdick, R.N., testified that a nurse reporting for duty under the influence of butalbitol, morphine, or opiates could put patients at risk of injury inasmuch as the nurse's judgment would be impaired and her alertness depressed.

Authority for taking disciplinary action against the licenses of professional nurses is found at TEX. REV. CIV. STAT. ANN. art. 4525 which states, in part: "(b) The Board may take disciplinary action against a registered nurse for any of the following reasons:

(8) Intemperate use of alcohol or drugs that the Board determines endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or the public."

The Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice found at 22 TAC §217.13 states, in part that: "The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of the R.N. which the board believes are likely to deceive, defraud, or injure clients or the public, including:

(13) leaving a nursing assignment without notifying one's immediate supervisor;

...

(15) misappropriating, in connection with the practice of nursing, medications, supplies, equipment...;

...

(17) providing information which was false, deceptive, or misleading in connection with the practice of professional nursing or failing to answer specific questions that would have affected the decision to license, employ, certify, or otherwise utilize an RN.

Respondent's drug addiction; use of butalbital, morphine and opiates while on duty; her misappropriation of drugs intended for patients; falsifying information on her application; and deserting her nursing assignment, endangered the well-being of patients. The Staff recommended that her license to practice professional nursing be revoked. The Administrative Law Judge agrees with the Staff's recommendation.

PROPOSED FINDINGS OF FACT

1. On November 7, 1994, formal charges were filed with the Board of Nurse Examiners for the State of Texas ("Board") by the Board's Staff ("Staff") against Rita Gayle Johnson ("Respondent").
2. Notice of the Staff's intention to take disciplinary action, of the formal charges, and of the hearing were mailed by certified mail to Respondent at her address of record in compliance with 22 TAC §213.10.
3. The Respondent holds permanent certificate number 556877 issued by the Board of Nurse Examiners for the State of Texas.
4. The Respondent was employed as a professional nurse at Bethania Health Care Center ("Bethania"), Wichita Falls, Texas, from January 14, 1991 to November 4, 1991.
5. On October 17, 1991, while on duty, Respondent was required to provide a urine sample for a drug screen when her behavior alerted the suspicions of her supervisor. The sample tested positive for butalbital and morphine.
6. On October 17, 1991, while on duty at Bethania, Respondent engaged in the use of butalbital and morphine, controlled substances, which altered her alertness and impaired her performance as a nurse, placing patients in her care in potential danger.

7. On or about October 17, 1991, while on duty Respondent stole butalbital and morphine intended for Bethania's patients.
8. As a result of Respondent's positive drug test Bethania terminated Respondent from employment on November 4, 1991.
9. On May 10, 1993, Respondent falsified her employment application with Chillicothe Hospital, by representing that she left Bethania because she moved to Vernon, Texas, when she was terminated for stealing butalbital and morphine from the Bethania, and using these drugs while she was on duty.
10. On or about June 29, 1993, Respondent stole a pint bottle of tylenol with codeine, an opiate, from Chillicothe's locked night box.
11. On July 1, 1993, while Respondent was on duty Respondent was required to provide a urine sample for a drug screen due to the missing bottle of tylenol with codeine. The sample tested positive for opiates.
12. On July 1, 1993 at 5:00 p.m., after Respondent gave the hospital a urine sample, she left her nursing assignment without telling her supervisor. Respondent was the only R.N. on duty when she deserted the hospital.
13. On July 1, 1993 while on duty at Chillicothe Hospital, Respondent engaged in the use of opiate, a controlled substance, which depressed her alertness and impaired her performance as a nurse, placing patients in her care in potential danger.

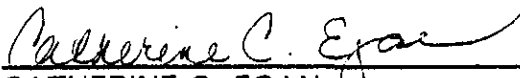
PROPOSED CONCLUSIONS OF LAW

1. The Board of Nurse Examiners has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue this Proposal for Decision under TEX. GOV'T CODE ANN. Ch. 2003.
3. The Board provided the Respondent with proper notice of the hearing and of the charges pursuant to TEX. GOV. CODE ANN. Ch. 2001.
4. Authority for taking disciplinary action against the licenses of professional nurses is found at TEX. REV. CIV. STAT. ANN. art. 4525 which states, in part: "(b) The Board may take disciplinary action against a registered nurse for any of the following reasons: ... (8) Intemperate use of alcohol or drugs that the Board determines endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs ... (9) Unprofessional, or

dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or injure patients or the public.

5. Unprofessional conduct under the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice includes, (13) leaving a nursing assignment without notifying one's supervisor; (15) misappropriating, in connection with the practice of nursing, medications, supplies, equipment of personal items of the client, employer, or any other person or entity or failing to take precautions to prevent such misappropriation; and (17) providing information which was false, deceptive, or misleading in connection with the practice of professional nursing or failing to answer specific questions that would have affected the decision to license, employ, certify, or otherwise utilize an RN. 22 TAC §217.13
6. Based upon Findings of Fact Nos. 5, 6, 11 and 13, Respondent has indulged in the intemperate use of drugs that could endanger patients in violation of TEX. REV. CIV. STAT. ANN. art. 4525(b)(8).
7. Based on Findings of Fact Nos. 7 and 10, Respondent misappropriated medications intended for patients for her own use, which constitutes unprofessional conduct under 22 TAC §217.13(15),
8. Based on Finding of Fact No. 12, Respondent left her nursing assignment without notifying her immediate supervisor, which constitutes unprofessional conduct under 22 TAC §217.13(13).
9. Based on Finding of Fact No. 9, Respondent provided misleading and deceptive information in connection with the practice of professional nursing, which constitutes unprofessional conduct under 22 TAC §217.17.
10. Based upon Findings of Fact Nos. 5-7, 9-10, 13, Respondent has demonstrated a lack of fitness to practice as a professional nurse by reason of mental or physical health that could result in injury to patients or the public in violation of TEX. REV. CIV. STAT. ANN. art. 4525(a)(9).
11. Based upon the foregoing, revocation of the Respondent's license is warranted.

SIGNED this 24th day of March, 1995.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS