

IN THE MATTER OF	§	BEFORE THE
	§	
PERMANENT CERTIFICATE	§	
NUMBER 555160	§	STATE OFFICE OF
ISSUED TO	§	
	§	
CHRISTINA MILES (FRY)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Board of Nurse Examiners for the State of Texas brought this case seeking disciplinary action against a licensee for leaving her nursing assignment without notifying appropriate personnel. The staff recommended that the licensee be issued a reprimand with stipulations. The licensee did not attend the hearing. This proposal finds that the subject license should be suspended and the suspension probated subject to conditions.

I. Procedural History

On July 21, 1993, the staff of the Board of Nurse Examiners (the Staff), filed a sworn complaint against Christina Miles (Respondent). The Staff alleged that the Respondent left her nursing assignment without notifying appropriate authorities. The Staff further alleged that such actions constitute grounds for disciplinary action against the Respondent's license.

The hearing commenced on February 8, 1994, in the Clements Building, 300 West 15th Street, Austin, Texas. After the taking of evidence, the hearing concluded the same day. The Staff was represented by Roy J. Rawls, Assistant General Counsel, Board of Nurse Examiners. Christina Miles did not appear and was not represented at the hearing.

II. Jurisdiction and Notice

The Board of Nurse Examiners 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 (Vernon Supp. 1994).

Notice of the Staff's intention to institute disciplinary action, dated April 2, 1992, was properly addressed and mailed by certified mail, return receipt requested, to the Respondent at 2402 Corpus Christi, Laredo, Texas 78043. The letter was received by the Respondent's agent on April 6, 1992. The Respondent responded by an undated letter postmarked April 16, 1992. A copy of the

formal charges, dated July 23, 1993, was sent by certified mail, return receipt requested, to the Respondent at the same address and to the Respondent at her record address, 1713 Aldama (Rear), Laredo, Texas 78043. The letter addressed to the Respondent's record address was returned by the Post Office to the Staff marked, "Unclaimed." The letter addressed to 2402 Corpus Christi, was received by the Respondent's agent on July 26, 1993. The notice of the hearing, dated January 20, 1994, was properly addressed and sent by certified mail, return receipt requested, to the Respondent's record address. As of the date of hearing, neither the envelope containing the notice letter nor the receipt evidencing delivery of same had been returned by the Post Office to the Staff. The Board of Nurse Examiners has provided by Rule, at 22 TAC §213.4, "Service of Notice. Service on the respondent shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent at his or her most recent address as shown in the records of the board." The Staff's attempts to notify the Respondent of the hearing upon her license comport with the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 (Vernon Supp. 1994) and 22 TAC §213.4. The notice of 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

About October 7, 1991, the Respondent was employed as a registered nurse at the Laredo State Center, Laredo, Texas. On December 23, 1991, the Respondent was scheduled to work the 10:00 p.m. to 6:00 a.m. shift. The Respondent together with an LVN, Debra Cavazos, was assigned to oversee two cottages.

Debra Cavazos, LVN, testified that on December 23, 1991, she was scheduled to work the same shift as the Respondent. Ms. Cavazos was responsible to oversee one cottage and the Respondent another. The Respondent reported for duty as scheduled. After approximately 30 minutes the Respondent informed Ms. Cavazos that she, the Respondent, was hungry and was leaving to get something to eat. At approximately 1:00 a.m. the Respondent called Ms. Cavazos and informed her that she had her children with her in her car and was looking for a babysitter. At approximately 3:00 a.m. the Respondent called Ms. Cavazos and informed her that she, the Respondent, could not return to finish her shift. Ms. Cavazos testified that she was left to supervise two cottages without the supervision of a registered nurse that night.

Rose Saldivar, Director of Nurses, Laredo State Center, testified that she learned on December 24, 1991, that the Respondent had not completed her shift as scheduled. Ms. Saldivar contacted the Respondent who stated that she had been ill and unable to work. Ms. Saldivar requested that the Respondent provide

documentation of the illness and the Respondent provided Ms. Saldivar with a copy of an emergency room form from Mercy Regional Medical Center, Laredo, Texas. The form indicated that the Respondent had received emergency room treatment at 12:21 p.m. on December 24, 1991. Ms. Saldivar contacted Mercy Regional Medical Center to verify the information and learned that the form had been for services rendered on December 21, 1991, and that the date on the form had been altered. The Respondent was terminated by Laredo State Center.

Ms. Saldivar testified that a registered nurse was required on the 10:00 p.m. to 6:00 a.m. shift at Laredo State Center to protect the safety and well being of the patients. She testified that an LVN was not adequate to provide the treatments which could arise during a shift. Mr. Saldivar also testified that if she had been contacted by the Respondent that she could have provided someone to cover the shift.

The Respondent sent a letter to the Staff about April 16, 1992, in which the Respondent wrote: "As far as my leaving my nursing post for the date 12/24/91 (on or before) I left for my allotted 30 min. break in my car when I was assaulted by an ex-boyfriend. I was so severely beaten that I could not return to work. I kept in contact with the facility every hour and explained what happened."

Authority for taking disciplinary action against the licenses of professional nurses is found at TEX. REV. CIV. STAT. art. 4525 which states, in part: "(b) The Board may take disciplinary action against a registered nurse for any of the following reasons: (9) Unprofessional or dishonorable conduct which, in the opinion of the Board, is likely to deceive, defraud, or injure patients or the public."

The Board has defined "unprofessional conduct" at 22 TAC §217.13, to include, "... (13) leaving a nursing assignment without notifying one's immediate supervisor."

The Respondent engaged in unprofessional conduct by leaving her nursing assignment without notifying her immediate supervisor. She abandoned her patients and subjected them to a risk of inadequate care. The Respondent's actions were irresponsible. The Staff recommended that the Respondent be issued a reprimand with stipulations effective for one year. After a review of the evidence, including the letter written by the Respondent, and giving consideration to the failure of the Respondent to respond to the formal charges or the notice of hearing, the Administrative Law Judge is of the opinion that the Respondent's actions warrant a more severe sanction than a reprimand. The Administrative Law Judge recommends that the license of the Respondent be suspended for two years with the suspension stayed and the Respondent placed on probation for the two year period subject to conditions. The

Administrative Law Judge recommends that in addition to the conditions proposed by the Staff that the Respondent be required to obtain counselling as well.

PROPOSED FINDINGS OF FACT

1. On July 21, 1993, formal charges were filed with the Board of Nurse Examiners for the State of Texas against Christina Miles (Respondent).
2. Notice of the intention to take disciplinary action, of the formal charges, and of the hearing were mailed by certified mail to the Respondent at her record address.
3. The Respondent holds permanent certificate number. 555160 issued by the Texas Board of Nurse Examiners.
4. About October 7, 1991, the Respondent was employed as a registered nurse at the Laredo State Center, Laredo, Texas.
5. On December 23, 1991, the Respondent was scheduled to work the 10:00 p.m. to 6:00 a.m. shift. The Respondent together with an LVN was assigned to oversee two cottages.
6. The Respondent reported for duty at approximately 10:00 p.m. on December 23, 1991, then left her duty post at 10:30 p.m. ostensibly to obtain something to eat.
7. After leaving her post as described in Finding of Fact No. 6, the Respondent did not return to work at any time during the shift described in Finding of Fact No 5.
8. The Respondent left Debra Cavazos, LVN, alone to oversee two separate cottages with patients on the subject shift.
9. The Respondent did not report to her supervisor prior to leaving her nursing assignment on December 23, 1991.
10. A registered nurse was required on the 10:00 p.m. to 6:00 a.m. shift at Laredo State Center to protect the safety and well being of the patients. An LVN was not adequate to provide the treatments which could arise during a shift.
11. The record contains no credible explanation for the Respondent's absence from her nursing assignment.

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 Board provided the Respondent with proper notice of the hearing and of the charges pursuant to the Administrative Procedures Act, TEX. GOV'T CODE ANN., Chapter 2001 (Vernon Supp. 1994) and 22 TAC §213.4.
3. 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: ... (9) Unprofessional or dishonorable conduct which, in the opinion of the Board, is likely to deceive, defraud, or injure patients or the public."
4. The Board has defined "unprofessional conduct" at 22 TAC §217.13, to include, "... (13) leaving a nursing assignment without notifying one's immediate supervisor."
5. Based upon Findings of Fact Nos. 5 - 10, the Respondent has engaged in unprofessional conduct in violation of TEX. REV. CIV. STAT. ANN. art. 4525(b)(9) and 22 TAC §217.13(13).
6. Based upon the foregoing, disciplinary action against the Respondent's license to practice professional nursing in the State of Texas is warranted.

Signed and entered this 15th day of February, 1994.



Earl A. Corbitt
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS