

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of Registered Nurse	§	
License Number 556877	§	REINSTATEMENT
issued to RITA GAYLE JOHNSON (KENT)	§	AGREED ORDER

On this day came to be considered by the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, the Petition for Reinstatement of Registered Nurse license number 556877, held by RITA GAYLE JOHNSON (KENT), hereinafter referred to as Petitioner.

An informal conference was held on March 7, 2006, at the office of the Board of Nurse Examiners, in accordance with Section 301.464, Texas Occupations Code.

Petitioner appeared in person. Petitioner was represented by Louis Leichter, Attorney at Law. In attendance were Mary Beth Thomas, MSN, RN, Director of Professional Nursing, Executive Director's Designee; James W. Johnston, General Counsel; Anthony L. Diggs, MSCJ, Director of Enforcement; and Diane E. Burell, Investigator.

FINDINGS OF FACT

1. Prior to institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Petitioner waived notice and hearing, and consented to the entry of this Order.
3. Petitioner received an Associate Degree in Nursing from Cooke County Junior College, Gainesville, Texas, on May 1, 1988. Petitioner was originally licensed to practice professional nursing in the State of Texas on October 30, 1989.

4. Petitioner's professional nursing employment history includes:

1988 - 1989	Staff Nurse	Cabrini Hospital Chicago, Illinois
1989 - 1990	Staff Nurse	Humana Hospital Hoffman Estates, Illinois
1990	Staff Nurse	Wichita Home Health Wichita Falls, Texas
1991 - 1992	Staff Nurse	Bethania Health Care Center Wichita Falls, Texas
1992 - 1993	Staff Nurse	Wichita General Wichita Falls, Texas
1993 -Unknown	Staff Nurse	Chillicothe Hospital Chillicothe, Texas
1995 - present	Not employed in nursing	

5. On April 1, 1995, Petitioner's license to practice professional nursing in the State of Texas was revoked by the Board of Nurse Examiners for the State of Texas. A copy of the April 1, 1995, Order of the Board, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as a part of this Order.

6. On or about December 22, 2005, Petitioner submitted a Petition for Reinstatement of License to practice professional nursing in the State of Texas.

7. Petitioner presented the following in support of her petition:

7.1. Letter of support, dated November 9, 2005, from Marinel M. Ammenheuser, PhD, RN, UTMB, Galveston, Texas, states Petitioner has been a very faithful participant in the Recovering Health Professionals group that meets at 7 PM on Wednesday nights in the library at Trinity Episcopal Church. Petitioner has been an outstanding member of the groups. She has actually been in recovery for ten (10) years, but recently has felt a sincere and quite intense desire to resume her career in nursing. Dr. Ammenheuser fully supports Petitioner in this endeavor because she considers Petitioner to be empathetic, dependable, ethical, and highly intelligent. She truly will be an asset to the nursing profession.

- 7.2. Letter of support, dated November 9, 2005, from Anne Rece, M.Ed., Hitchcock ISD, Hitchcock, Texas, states Petitioner cared for Ms. Rece's mother, who suffered late stages of Alzheimer's and died of complications resulting from a strangulated hiatal hernia. From the onset, Petitioner was candid with Ms. Rece and explained that she had lost her license to practice due to prior drug abuse. Ms. Rece admired Petitioner for her forthrightness. During Petitioner's employment, she was not only competent and reliable; she was passionate about her work, and driven to provide the utmost in quality care. Petitioner gave of herself without personal regard. She volunteered her time, and ultimately lived in Ms. Rece's mother's home as demands increased. Petitioner administered Ms. Rece's mother's regimen of medications, and coordinated the efforts of two (2) other health care professionals, in order to assure quality care. Petitioner's professional posture extends to her personal life. She is innately caring and sensitive to the needs of others. Ms. Rece recommends Petitioner with the knowledge that she is an individual of principle and high moral character.
- 7.3. Letter of support, dated November 14, 2005, from Carol Kelleher, PhD, Houston, Texas, states she has known Petitioner for nearly two (2) years and has been privy to the high quality of care she provided others during illness. Dr. Kelleher was so impressed with how Petitioner cared for the elderly and demented mother of a friend, that Dr. Kelleher hired her to care for her after a hip replacement. She was honest with Dr. Kelleher about her chemical abuse and her current recovery program. Following Dr. Kelleher's surgery, Petitioner cared for her, beginning in August of 2005, and remains in her employ to date. Initially, Dr. Kelleher admired Petitioner's forthright explanation that several years in the past, she had abused chemicals, a dire mistake which resulted in the loss of her nursing license. Dr. Kelleher has found Petitioner to be responsible, trustworthy, and professional. During her care, Petitioner was very kind, sensitive, and responsive to Dr. Kelleher's needs. While Dr. Kelleher no longer requires Petitioner's service as a health care provider, she continues to employ her as her housekeeper who has free access to her home. Petitioner is timely and duty-conscious without fail. Without question, Petitioner should return to the nursing profession and without reserve, Dr. Kelleher recommends reinstatement.
- 7.4. Letter of support, dated November 7, 2005, from Charlotte Sanders, Jacksonville, Texas, states in August 1995, her father was dying of malignant brain tumors. During the final stages of his illness, Ms. Sanders hired Petitioner to assist the family with his care during the nights. Petitioner was a very skilled, compassionate individual who was able to keep the family apprised of the stages of his illness and its effect on the body. Her expertise in caring of the ill eased the family's minds, knowing that he was in capable hands. Ms. Sanders would not hesitate to ask Petitioner again for her assistance.

- 7.5. Letter of support, dated January 17, 2006, from Susan W. McConnell, RN, MSN, states she has known Petitioner for over two (2) years and sponsors her in her recovery efforts. Ms. McConnell has found Petitioner to be conscientious and diligent on the path she has chosen of confronting past mistakes and creating a future for herself and her family. She practices the tenets of recovery with compassion for herself and others, consistently seeking the wisdom of recovering professionals as she faces the challenges of daily living. Petitioner attends meetings regularly and uses the principles of recovery as a foundation for all aspects of her personal and professional life. Ms. McConnell believes Petitioner is sincere in her application for reinstatement of her license and she supports Petitioner's efforts to return to the profession of nursing.
 - 7.6. Documentation of one (1) negative drug screen collected September 14, 2005.
 - 7.7. Documentation of support group attendance dating from July 5, 2005, through January 11, 2006.
 - 7.8. Documentation of twenty-one (21) Type I Continuing Education contact hours.
8. Petitioner gives February 11, 2002, as her date of sobriety.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
3. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

ORDER

IT IS THEREFORE AGREED, subject to ratification by the Board of Nurse Examiners, that the petition of RITA GAYLE JOHNSON (KENT), Registered Nurse license number 556877, to practice professional nursing in the state of Texas, be and the same is hereby

GRANTED SUBJECT TO THE FOLLOWING CONDITIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et. seq.* and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's multistate licensure privilege, if any, to practice professional nursing in the State of Texas

IT IS FURTHER AGREED and ORDERED that while Petitioner's license is encumbered by this Order, Petitioner 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 Petitioner wishes to work.

(1) PETITIONER SHALL NOT seek employment or practice nursing for compensation until she has completed the following pre-licensure conditions and obtained a license to practice professional nursing from the Board.

(2) PETITIONER SHALL apply for a "Six-Month Clinical Permit" for the limited purpose of completing a refresher course. PETITIONER SHALL NOT, in any way, attempt to use this clinical permit for any purpose other than attending this course.

(3) PETITIONER SHALL successfully complete a nursing refresher course prior to returning to the practice of professional nursing in the State of Texas. PETITIONER SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. The course content shall include: 1) the role of the professional nurse; 2) a review of the nursing process to include assessment, planning, implementation and evaluation; 3) Pharmacology review; 4) medication administration review for all standard route of administration; 5) documentation, quality assurance and legal

implications for nursing practice; and 6) current CPR certification. This course must contain a minimum 80-hour clinical component, providing direct patient care, which is to be supervised by another registered nurse.

(4) Upon completion of the refresher course, PETITIONER SHALL return the clinical permit to the office of the Board, and PETITIONER SHALL CAUSE the sponsoring institution to notify the Board, on a form provided by the Board, of Petitioner's successful completion of the refresher course, including the required clinical component.

(5) Upon verification of successful completion of the agreed pre-licensure conditions of reinstatement, as set out in this Order, PETITIONER SHALL pay all re-registration fees and be issued a license to practice professional nursing in the State of Texas, which shall bear the appropriate notation. Said license issued to RITA GAYLE JOHNSON (KENT), shall be subject to the following agreed post-licensure stipulations:

(6) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in nursing jurisprudence. PETITIONER SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience must include registered nurses. It must be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and documentation of care. Courses focusing on malpractice issues will not be accepted. PETITIONER 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 PETITIONER's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board-approved courses can be found on the Board's website www.bne.state.tx.us (under BNE events).*

(7) PETITIONER SHALL, within one (1) year relicensure, successfully complete a course in nursing ethics. PETITIONER 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. The course shall be a minimum of six (6) contact hours in length. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: principles of nursing ethics; confidentiality; and professional boundaries. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to verify PETITIONER's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board approved courses may be found on the Board's website, www.bne.state.tx.us (under BNE events).*

(8) PETITIONER SHALL, within forty-five (45) days following the date of relicensure, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars (\$500) payable to TPAPN.

(9) Upon acceptance into the TPAPN, PETITIONER SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Board of Nurse Examiners.

(10) PETITIONER SHALL comply with all requirements of the TPAPN contract during its term.

(11) PETITIONER SHALL CAUSE the TPAPN to notify the Board of Nurse Examiners of any violation of the TPAPN contract.

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

PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice professional nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license to practice professional nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

Signed this 3rd day of April, 2006.

Rita Gayle Johnson (Kent)
RITA GAYLE JOHNSON (KENT), Petitioner

Sworn to and subscribed before me this 3rd day of April, 2006.

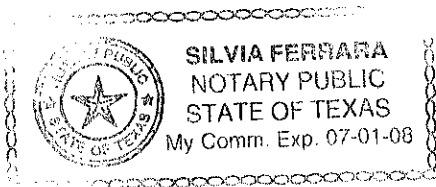
SEAL

Silvia Ferrara
Notary Public in and for the State of Texas

Approved as to form and substance.

Louis Leichter
LOUIS LEICHTER, Attorney for Petitioner

Signed this 4 day of April, 2006.



WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 3rd day of April, 2006, by RITA GAYLE JOHNSON (KENT), Registered Nurse license number 556877, and said Order is final.

Effective this 9th day of May, 2006.



Katherine A. Thomas, MN, RN
Executive Director on behalf
of said Board

DOCKET NO. 507-95-0179

IN THE MATTER OF

PERMANENT CERTIFICATE
NUMBER 566877

ISSUED TO
RITA GAYLE JOHNSON

§
§
§
§
§
§

BEFORE THE

BOARD OF NURSE EXAMINERS

FOR THE STATE OF TEXAS

ORDER OF THE BOARD

TO: RITA GAYLE JOHNSON
2616 14th Street
Vernon, Texas 76384
AND
1028 Gordon
Vernon, Texas 76384

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 License Number 556877 previously issued to RITA GAYLE JOHNSON to practice professional nursing in the State of Texas be, and the same is hereby, revoked.

IT IS FURTHER ORDERED that License Number 556877 previously issued to RITA GAYLE JOHNSON upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

ENTERED this 11th day of April, 1995.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

By: _____


LOUISE WADDILL, R.N., PH.D.
EXECUTIVE DIRECTOR

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 rennotice 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 rennotice 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 butalbital, 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 or 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

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