

DOCKET NUMBER 507-08-0837

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 85499	§	OF
ISSUED TO	§	
JUDY BECK HARDEWAY	§	ADMINISTRATIVE HEARINGS

ORDER OF THE BOARD

TO: Judy Beck Hardeway
1121 Orchard Park Circle
Pflugerville, Texas 78660

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.

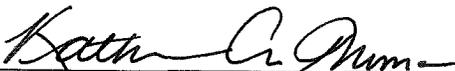
NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 85499, previously issued to JUDY BECK HARDEWAY, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 85499, previously issued to JUDY BECK HARDEWAY, 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 vocational nursing in the State of Texas.

Entered this 18th day of March, 2008.

TEXAS BOARD OF NURSING

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

SOAH DOCKET NO. 507-08-0837

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
LICENSE NUMBER 85499 § OF
ISSUED TO JUDY B. HARDEWAY § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Board of Nursing¹ (Staff/Board) brought this case seeking revocation of the vocational nursing license of Judy B. Hardeway (Respondent). Staff alleged that Respondent violated a prior Board Order by failing to sign up for random drug testing, failing to pay a \$750.00 fine, failing to have her employer submit periodic reports on her capability to practice vocational nursing, and failing to attend substance abuse support group meetings. Despite being sent proper notice, Respondent failed to appear or be represented at the hearing. Staff moved for a default, which motion was granted, establishing all the allegations contained in Staff's First Amended Formal Charges as true. In this proposal for decision, the ALJ adopts Staff's requested sanction of revocation of Respondent's nursing license.

I. BACKGROUND AND EVIDENCE

On January 16, 2008, the hearing in this matter convened before Administrative Law Judge (ALJ) Thomas H. Walston, at the hearings facility of the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas. Attorney Victoria Cox represented Staff.

Staff introduced various documents into evidence establishing that Respondent had been sent proper and timely notice of the allegations and of the hearing to her last known address in the Board's records.² Staff then made an oral motion for default due to Respondent's failure to appear

¹ Prior to September 1, 2007, the name of the Board was the Board of Nurse Examiners.

² The Board's rules require its licensees to provide a current address and to notify the Board within 10 days of any change in address. 22 TEX. ADMIN. CODE § 217.7.

at the hearing. The motion was granted, resulting in all of Staff's allegations contained in the First Amended Formal Charges being deemed admitted as true.

Staff also presented its expert witness, Carol Marshall, to testify regarding the appropriate sanction. Ms. Marshall stated that Respondent entered into an Agreed Order with the Board concerning a drug-related criminal conviction. She noted that the Agreed Order was entered in March 2006, and Respondent has failed to comply with it for almost two years. Further, she testified that Respondent's drug related offense causes concern because an impaired nurse endangers patients. Under all of the circumstances, Ms. Marshall stated, Respondent's license should be revoked. She added that even with revocation, Respondent can apply for reinstatement after twelve months.

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 be entered and that the Board revoke Respondent's nursing license based on the Findings of Fact and Conclusions of Law presented below.

III. PROPOSED FINDINGS OF FACT

1. Judy Beck Hardeway (Respondent), a vocational nurse licensed by the State of Texas, holds permanent license number 85499 issued by the Texas Board of Nursing (Board).
2. Board Staff filed Formal Charges against Respondent on August 23, 2006, and First Amended Formal Charges on November 30, 2006.
3. On November 27, 2007, Staff mailed a Notice of Hearing and copy of the First Amended Formal Charges to Respondent by certified mail, return receipt requested, to her last known address of record on file with the Board, which is 1121 Orchard Park Circle, Pflugerville, Texas 78660.

4. 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.
5. 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.**
6. Respondent did not appear and was not represented at the hearing held January 16, 2008.
7. Staff's motion for default was granted and its factual allegations were deemed admitted as true.
8. Respondent entered into an Agreed Order with the Board dated March 21, 2006, related to Respondent's conviction of the offense of "Possession of Controlled Substance PG2<1G," a State Jail Felony, in the 147th Judicial District Court of Travis County, Austin, Texas, Cause Number 0991473. The Agreed Order required Respondent to sign up for random drug testing, pay a \$750.00 fine, have her employer submit periodic reports on her capability to practice vocational nursing, and attend substance abuse support group meetings.
9. Respondent failed to sign up for random drug testing, failed to pay the \$750.00 fine, failed to have her employer submit periodic reports on her capability to practice vocational nursing, and failed to attend substance abuse support group meetings.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. §§ 301.452 and 301.453.
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 and TEX. OCC. CODE ANN. § 301.454.
3. 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 and 217.7.
4. Based on 1 TEX. ADMIN. CODE § 155.55, Staff's allegations are deemed true.

5. Respondent violated TEX. OCC. CODE ANN. § 301.452(b)(1) and (10), and 22 TEX. ADMIN. CODE § 217.12(11)(B).
6. The Board should enter a default order against Respondent.
7. Pursuant to TEX. OCC. CODE ANN. §§ 301.452 and 301.453, Respondent's nursing license should be revoked.

SIGNED January 18, 2008.



**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**