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| IN THE MATTER OF | § | BEFORE THE ELIGIBILITY |
| | § | |
| PERMANENT CERTIFICATE | § | AND DISCIPLINARY |
| | § | |
| NUMBER 564856 | § | COMMITTEE |
| | § | |
| ISSUED TO | § | OF THE TEXAS |
| | § | |
| HEATHER LORRAINE WHEAT | § | BOARD OF NURSING |

TEXAS BOARD OF NURSING
I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Executive Director of the Board

**ORDER OF THE BOARD**

TO: Heather Lorraine Wheat
4215 N. Major Drive, #809
Beaumont, Texas 77713

During open meeting held in Austin, Texas, on May 10, 2011, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case. This case was heard, and based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee of the Texas Board of Nursing finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, chapter 301 of the Texas Occupations Code, for retention of Respondent's license to practice professional nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing (22 TEX. ADMIN.CODE § 213.2(j)). All parties have a right to judicial review of this Order.

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 564856, previously issued to HEATHER LORRAINE WHEAT, to practice professional nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privilege, if any, to practice professional nursing in the State of Texas.

Entered this 10th day of May, 2011.

TEXAS BOARD OF NURSING

BY: Katherine A. Thomas

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

| | | |
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| **In the Matter of Permanent License** | § | **BEFORE THE TEXAS** |
| **Number 564856, Issued to** | § | |
| **HEATHER LORRAINE WHEAT, Respondent** | § | **BOARD OF NURSING** |

## FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, HEATHER LORRAINE WHEAT, is a Registered Nurse holding license number 564856, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

## CHARGE I.

On or about October 19, 2009, Respondent failed to comply with the Agreed Order issued to her on November 13, 2007, by the Texas Board of Nursing. Noncompliance is the result of her failure to comply with Stipulation Number Four (4) of the Agreed Order which states, in pertinent part:

> (4) RESPONDENT SHALL, within one (1) year of entry of the suspension being stayed, successfully complete a course in Texas nursing jurisprudence and ethics....

A copy of the November 13, 2007, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Orders which are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated May 10, 2005, and Agreed Order issued November 13, 2007.

Filed this 14th day of February, 20 11.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Agreed Order dated May 10, 2005.
Agreed Order dated November 13, 2007.

D/2010.12.28

BEFORE THE TEXAS BOARD OF NURSING
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| In the Matter of Registered Nurse | § | |
| License Number 564856 | § | AGREED |
| issued to HEATHER LORRAINE WHEAT | § | ORDER |

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of HEATHER LORRAINE WHEAT, Registered Nurse License Number 564856, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1) and (10), Texas Occupations Code. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order offered by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice professional nursing in the State of Texas.

4. Respondent received a Baccalaureate Degree in Nursing from The University of Texas, Galveston, Texas, on May 1, 1984. Respondent was licensed to practice professional nursing in the State of Texas on August 23, 1990.

5. Respondent's professional nursing employment history includes:

| | | |
|---|---|---|
| 6/84 - 7/90 | Staff Nurse | Mt. Auburn Hospital<br>Cambridge, Massachusetts |
| 9/90 - 9/91 | Staff Nurse | St. David's Hospital<br>Austin, Texas |

Respondent's professional nursing employment history continued:

| | | |
|---|---|---|
| 10/91 - 11/02 | Staff Nurse | St. Elizabeth Hospital<br>Beaumont, Texas |
| 8/01 - 12/03 | PRN Staff Nurse | Southeast Texas OB/GYN Associates<br>Beaumont, Texas |
| 1/04 | Staff Nurse | Beaumont Bone and Joint Institute<br>Beaumont, Texas |
| 2/04 - 1/05 | Unknown | |
| 2/05 - 12/05 | Staff Nurse | Texas Home Health<br>Beaumont, Texas |
| 1/06 - present | Unknown | |

6. On May 10, 2005, Respondent was issued an Agreed Order requiring her to participate and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the May 10, 2005, Agreed Order, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as part of this Order.

7. Respondent states February 2007, as her date of sobriety.

8. 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.

9. Formal Charges were filed on August 3, 2006. A copy of the Formal Charges is attached and incorporated, by reference, as part of this Order.

10. Formal Charges were mailed to Respondent on August 7, 2006.

## CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove a violations of Section 301.452(b)(1) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(G), (H), (9) and 11(B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 564856, heretofore issued to HEATHER LORRAINE WHEAT, including revocation of Respondent's professional license to practice nursing in the State of Texas.

## ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 564856, previously issued to HEATHER LORRAINE WHEAT, to practice professional nursing in Texas is hereby SUSPENDED and said suspension is enforced until Respondent completes a treatment program approved by the Board, provides documentation of successful completion, and has obtained twelve (12) consecutive months of sobriety. Any relapse prior to the completion of the twelve (12) consecutive months of sobriety will result in an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED that Permanent Certificate Number 564856 previously issued to HEATHER LORRAINE WHEAT, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice professional nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, upon verification of successful completion of the approved treatment and twelve (12) consecutive months of sobriety as set out in this Order, the Suspension will be stayed, and RESPONDENT will be placed on probation for three (3) years with the following agreed terms of probation:

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *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.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and be issued a license to practice professional nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL pay a monetary fine in the amount of five hundred ($500.00) dollars. RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

(4) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is <u>not</u> being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries,

and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT 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 RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bon.state.tx.us/about/stipscourses.html.*

**IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR THREE (3) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:**

(5) RESPONDENT SHALL notify all future employers in professional nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) RESPONDENT SHALL CAUSE each present employer in professional nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a professional nurse.

(7) For the first year of employment as a Registered Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse. Direct supervision requires another professional nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising RN shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL NOT practice as a professional nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a professional nurse.

(10) RESPONDENT SHALL NOT practice as a professional nurse in any critical care area for one (1) year of employment as a professional nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(11) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a professional nurse.

(12) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice professional nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a professional nurse.

(13) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the

prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(14) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the probation period, random screens shall be performed at least once every three (3) months.

Specimens shall be screened for at least the following substances:

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|---|---|
| Amphetamines | Meperidine |
| Barbiturates | Methadone |
| Benzodiazepines | Methaqualone |
| Cannabinoids | Opiates |
| Cocaine | Phencyclidine |
| Ethanol | Propoxyphene |
| tramadol hydrochloride (Ultram) | |

A Board representative may appear at the RESPONDENT's place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

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All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(15) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT is dismissed from therapy.

(16) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least; the date of each meeting, the name of each group attended, and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL

submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

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

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## RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. 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 understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 2 day of October, 2007.

HLWheat

HEATHER LORRAINE WHEAT, Respondent

Sworn to and subscribed before me this 2nd day of October, 2007.

SEAL

HILDA A MANNING
Notary Public, State Of Texas
My Commission Expires
01-12-2009

Hilda A Manning

Notary Public in and for the State of TEXAS

Approved as to form and substance.

JBWhittenburg

J.B. WHITTENBURG, Attorney for Respondent

Signed this 2nd day of October, 2007.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 2nd day of October, 20 07, by HEATHER LORRAINE WHEAT, Registered Nurse License Number 564856, and said Order is final.

Effective this 13th day of November, 20 07.

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

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| **In the Matter of Permanent License** | § | **BEFORE THE BOARD** |
| **Number 564856, Issued to** | § | **OF NURSE EXAMINERS** |
| **HEATHER LORRAINE WHEAT, Respondent** | § | **FOR THE STATE OF TEXAS** |

## FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, HEATHER LORRAINE WHEAT, is a Registered Nurse holding license number 564856, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

### CHARGE I.

On or about January 14, 2005, submitted an application for employment to Texas Home Health, Beaumont, Texas, on which she failed to include her employment from December 2003 through January 2004, with Beaumont Bone and Joint Institute, Beaumont, Texas. Respondent's conduct was deceiving and deprived the facility of information which may have affected the decision to employ her.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10),Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(H) and (I).

### CHARGE II.

On or about November 17, 2005, while employed with Texas Home Health, Beaumont, Texas, Respondent misappropriated Hydrocodone and Ambien from Patient A.L. Respondent's conduct was likely to defraud the patient of the cost of the medications.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10),Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(G).

### CHARGE III.

On or about November 25, 2005, while employed with Texas Home Health, Beaumont, Texas, Respondent misappropriated Hydrocodone and Ambien from Patient A.L.. Respondent's conduct was likely to defraud the patient of the cost of the medications.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.(6)(G).

## CHARGE IV.

On or about November 2005, Respondent failed to comply with the Agreed Order issued to her on May 10, 2005, by the Board of Nurse Examiners for the State of Texas. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) contract during its term. Specifically, Respondent was requested to drug test but was found heating her urine in the microwave; therefore, the validity of the screen results was questionable.

A copy of the May 10, 2005, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10),Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(11)(B).

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NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. and TEX. OCC. CODE Ch. 53. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, TEX. OCC. CODE ANN. The cost of proceedings shall include, but is not limited to, the cost paid by the board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bne.state.tx.us.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Chemical Dependency, and Lying and Falsification which can be found at the Board's website, www.bne.state.tx.us.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated May 10, 2005.

Filed this 3 day of August, 2006.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Victoria Cox, Assistant General Counsel
State Bar No. 0079585
E. Joy Sparks, Assistant General Counsel
State Bar No. 18874600
BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305.8101 or (512)305-7401

Attachments: Agreed Order dated May 10, 2005.

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
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|---|---|---|
| In the Matter of License Number 564856 | § | AGREED |
| issued to HEATHER LORRAINE WHEAT | § | ORDER |

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of HEATHER LORRAINE WHEAT, License Number 564856, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9) and (10), Texas Occupations Code. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order offered by Katherine A. Thomas, MN, RN, Executive Director.

## FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice professional nursing in the State of Texas.

4. Respondent received a Baccalaureate Degree in Nursing from the University of Texas, Galveston, Texas, on May 1, 1984. Respondent was licensed to practice professional nursing in the State of Texas on August 23, 1990.

5. Respondent's professional nursing employment history includes:

| | | |
|---|---|---|
| 6/84 - 7/90 | Staff Nurse | Mt. Auburn Hospital<br>Cambridge, Massachusetts |

Respondent's professional nursing employment history continued:

| | | |
|---|---|---|
| 9/90 - 9/91 | Staff Nurse | St. David's Hospital<br>Austin, Texas |
| 9/91 - 11/02 | Staff Nurse | St. Elizabeth Hospital<br>Beaumont, Texas |
| 8/01 - 12/03 | PRN Staff Nurse | Southeast Texas OB/GYN Assoc.<br>Beaumont, Texas |
| 12/03 - 1/04 | Staff Nurse | Beaumont Bone and Joint Institute<br>Beaumont, Texas |
| 2/04 - present | Unknown | |

6. On or about November 2, 2002, while employed with St. Elizabeth Hospital, Beaumont, Texas, Respondent misappropriated Demerol from the facility and the patients' thereof. Respondent's conduct was likely to defraud the facility and the patients' thereof of the cost of the medication.

7. On or about January 2, 2004, while employed with Beaumont Bone and Joint Institute, Beaumont, Texas, Respondent misappropriated Demerol from the facility and the patients' thereof. Respondent's conduct was likely to defraud the facility and the patients' thereof of the cost of the medication.

8. On or about March 8, 2004, and March 9, 2004, Respondent passed unauthorized refill prescriptions for Hydrocodone. Respondent's conduct was likely to deceive the pharmacy and possession of Hydrocodone through use of a unauthorized prescription is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substance Act).

9. On or about August 4, 2004, Respondent engaged in the intemperate use of Propoxyphene in that she produced a specimen for a drug screen which resulted positive for Propoxyphene. Possession of Propoxyphene is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substance Act).

10. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.

11. 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.

12. Respondent's conduct described in Findings of Fact Six (6) through Nine (9) resulted from Respondent's dependency on chemicals.

13. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

## CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Section 301.452(b)(9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(19) and (21).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against License Number 564856, heretofore issued to HEATHER LORRAINE WHEAT, including revocation of Respondent's professional license to practice nursing in the State of Texas.

5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

## ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, 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.

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

(3) RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term.

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

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

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

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

IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of Respondent's license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

## RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Board of Nurse Examiners, and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 3rd day of May, 2005.

HEATHER LORRAINE WHEAT, Respondent

Sworn to and subscribed before me this 3 day of May, 2005.

SEAL

HILDA A MANNING
Notary Public, State Of Texas
My Commission Expires
01-12-2009

Notary Public in and for the State of _____

Approved as to form and substance.

J.B. Whittenburg, Attorney for Respondent

Signed this 3 day of May, 2005.

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby accept and enter the Agreed Order that was signed on the 3rd day of May, 20 05, by HEATHER LORRAINE WHEAT, License Number 564856, and said Order is final.

Entered and effective this 10th day of May, 20 05.

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

Re: Permanent Certificate Number 564856
Issued to HEATHER LORRAINE WHEAT
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 20 11, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

HEATHER LORRAINE WHEAT
4215 N. Major Drive, #809
Beaumont, Texas 77713

BY: Katherine A. Thomas

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