

DOCKET NUMBER 507-10-5462

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBERS 670648 and 165052
ISSUED TO
D. DEWE HILLIARD

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARING



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.
Sharon P. Thomas
Executive Director of the Board

OPINION AND ORDER OF THE BOARD

TO: D. DEWE HILLIARD
3630 MELTON RD.
SANGER, TX 76266

SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on April 28-29, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered and vocational nursing licenses of D. Dewe Hilliard with changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD, Staff's recommendations, and Respondent's presentation during the open meeting, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD as if fully set out and separately stated herein, except for Conclusion of Law Number 8, which is not

adopted by the Board. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Conclusion of Law Number 8

The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ, if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when she included her recommended sanction as a conclusion of law. A recommendation for a sanction is not a proper conclusion of law. An agency is the final decision maker regarding the imposition of sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation...[T]he Board, not the ALJ, is the decision maker concerning sanctions. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W, 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App.-Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex.1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App.-Austin 2005, pet. denied).

The Board rejects Conclusion of Law Number 8 because it is a recommended

sanction and not a proper conclusion of law. Further, the Board retains authority to determine the final sanction in this matter. The ALJ recommends the revocation of the Respondent's license. The Board agrees with the ALJ that the Respondent violated the Occupations Code §301.452(b)(9), (10), and (13). The Board further agrees with the ALJ that the Respondent's conduct posed a serious risk to the patients under her care. However, despite the seriousness of the Respondent's actions, the Board disagrees with the ALJ that the Respondent's license should be revoked. The Board finds, instead, that a lesser sanction is warranted under its Disciplinary Matrix, located at 22 Tex. Admin. Code §213.33(b). The Board finds that the ALJ failed to correctly interpret or apply applicable law in this matter when she recommended revocation of the Respondent's license.

The Board finds that the Respondent's conduct warrants a second tier offense, sanction level I sanction for her violations of the Occupations Code §301.452(b)(10). Further, the Board finds that the Respondent's conduct warrants a second tier offense, sanction level I sanction for her violations of the Occupations Code §301.452(b)(13). Further, the Board finds that the Respondent's conduct warrants a third tier offense, sanction level I sanction for her violations of the Occupations Code §301.452(b)(9). At these sanction levels, the Disciplinary Matrix provides for the imposition of either a Warning or a Reprimand with Stipulations. The Board finds that, based upon the seriousness of the violations, the number of violations, and the associated risk of serious patient harm, as specified in the adopted findings of fact, the sanction of a Reprimand with Stipulations is appropriate and necessary to adequately protect the interests of the public. 22 Tex. Admin. Code §213.33(e)(4) requires the issuance of a Reprimand to include reasonable probationary stipulations, such as supervised practice, periodic Board review, remedial education, limited nursing activities, and random drug testing. The Board finds that the imposition of such probationary stipulations are necessary to ensure the Respondent's

ability to safely practice nursing. Finally, the imposition of these probationary stipulations are consistent with the Board's prior administrative decisions involving similar facts.

IT IS, THEREFORE, ORDERED THAT RESPONDENT shall receive the sanction of a REPRIMAND WITH STIPULATIONS, and RESPONDENT SHALL comply 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 § 211.1 *et seq.* and this Order.

IT IS FURTHER ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

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

IT IS FURTHER ORDERED that while Respondent's license(s) is/are encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a nurse licensure compact 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.

(1) RESPONDENT SHALL, within one (1) year of entry of this Order, 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 not 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) 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 Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; 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/disciplinaryaction/stipscourses.html>.*

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in nursing documentation. RESPONDENT 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) hours in length of classroom time. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. RESPONDENT SHALL cause the instructor to submit a Verification of Course Completion form, provided by the Board, to the Board's office 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/disciplinaryaction/stipscourses.html>.*

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in physical assessment. RESPONDENT 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 shall include Nurses. The didactic portion of this course shall be a minimum of six (6) hours in length. RESPONDENT SHALL perform physical assessments on live patients in a clinical setting for a minimum of twenty-four (24) hours. The clinical component SHALL focus on tasks of physical assessment only and shall be provided by the same Registered Nurse who provides the didactic portion of this course. To be approved, the course shall cover all systems of the body. Performing assessments on mock patients or mannequins WILL NOT be accepted. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor 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/disciplinaryaction/stipscourses.html>.*

(4) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, RESPONDENT SHALL SUBMIT the continuing education certificate of completion for this

program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. Information regarding this workshop may be found at the following web address:
<http://learningext.com/hives/a0f6f3e8a0/summary>.

(5) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars. RESPONDENT SHALL pay this fine within forty-five (45) days of the entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER ORDERED, 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 A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD.

(6) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT'S license(s). RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT'S license(s). 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.

(7) RESPONDENT SHALL CAUSE each present employer in 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 nurse.

(8) For the first year of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another Nurse, as applicable, 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.

(9) For the remainder of the stipulation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising Nurse 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 nurse 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.

(10) 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 nursing. These reports shall be completed by the Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for TWO (2) year(s) of employment as a nurse.

(11) 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 a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.**

(12) 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 stipulation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

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 stipulation period and require RESPONDENT to produce a specimen for screening.

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 stipulation period.

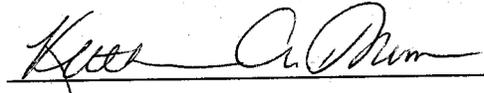
Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this

Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

Entered this 29th day of April, 2011.

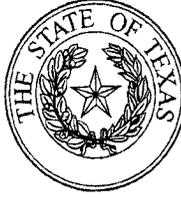
TEXAS BOARD OF NURSING

A handwritten signature in black ink, appearing to read "Katherine A. Thomas", is written over a horizontal line.

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-10-5462 (February 3, 2011).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

2/18/11

February 3, 2011

VIA INTER-AGENCY

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

**RE: Docket No. 507-10-5462; In the Matter of Permanent Certificate
Nos. RN 670648 and LVN 165052 Issued to D. Dewe Hilliard**

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/ap

Enclosure

XC: R. Kyle Hensley, Staff Attorney, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA INTER-AGENCY
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – (with 1 CD) – VIA INTER-AGENCY
D. Dewe Hilliard, RN, 3630 Melton Road, Sanger, TX 76266 – VIA REGULAR MAIL

SOAH DOCKET NO. 507-10-5462

IN THE MATTER OF PERMANENT
CERTIFICATE NOs.
RN 670648 AND LVN 165052
ISSUED TO D. DEWE HILLIARD

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action against the respondent, D. Dewe Hilliard, seeking to revoke her licenses as a registered nurse and vocational nurse. Staff alleged that Ms. Hilliard had violated the Nursing Practice Act¹ and various Board rules by failing to conform to the standards of nursing practice on three occasions and by using methamphetamine while subject to call or duty. Ms. Hilliard failed to appear at the hearing; therefore, the Administrative Law Judge (ALJ) granted Staff's motion for default and recommends that Ms. Hilliard's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on January 6, 2011, before ALJ Shannon Kilgore, at the hearing facilities of the State Office of Administrative Hearings (SOAH) in Austin, Texas. Kyle Hensley, Assistant General Counsel, appeared for Staff. Neither Respondent nor anyone acting on her behalf appeared at the hearing.

Staff introduced various documents in evidence, establishing that Staff had sent Ms. Hilliard proper and timely notice of the hearing and of the allegations against her. The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law. Staff made an oral motion for default due to Respondent's failure to attend the hearing. The motion was granted, resulting in all of Staff's allegations contained in the First Amended Formal Charges being deemed admitted.

¹ TEX. OCC. CODE ch. 301.

Staff also presented its expert witness, nursing practice consultant Denise Benbow, to testify regarding the appropriate sanction. In Ms. Benbow's opinion, revocation of Ms. Hilliard's licenses is justified. Ms. Benbow noted that some of the violations in this case could have resulted in potential danger to patients, and one violation involved dishonesty.

II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law, the ALJ recommends that the Board revoke Ms. Hilliard's nursing licenses.

III. FINDINGS OF FACT

1. D. Dewe Hilliard is licensed as a registered and vocational nurse, and holds License Nos. 670648 and 165052 issued by the Texas Board of Nursing (Board).
2. On June 19, 2007, September 20, 2007, October 12, 2007, and January 9, 2009, the Board's staff (Staff) notified Ms. Hilliard that it was initiating investigations of charges against her.
3. On July 28, 2009, Staff notified Ms. Hilliard that Formal Charges had been filed against her.
4. On July 22, 2010, Staff notified Ms. Hilliard that First Amended Formal Charges had been filed against her. Ms. Hilliard received the First Amended Formal Charges.
5. On July 28, 2010, Staff mailed its Notice of Hearing by certified mail, return receipt requested, to Ms. Hilliard's address of record with the Board. The notice was returned unclaimed.
6. On August 30, 2010, Staff mailed its Notice of Hearing by regular mail to Ms. Hilliard's address of record with the Board.
7. 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. The Notice of Hearing stated the hearing would convene on October 14, 2010.
8. The Notice of Hearing contained the following language in capital letters in at least 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.”

9. On October 8, 2010, Ms. Hilliard filed a request for a continuance of the hearing.
10. The hearing was continued to January 6, 2011. On December 17, 2010, the staff of the State Office of Administrative Hearings (SOAH) mailed the order continuing the hearing to Ms. Hilliard at her address of record with the Board, which was also the address she provided on her October 2010 request for continuance.
11. The hearing convened on January 6, 2011, before ALJ Shannon Kilgore, at SOAH's hearing facilities in Austin, Texas. Kyle Hensley, Assistant General Counsel, appeared for Staff. Neither Ms. Hilliard nor anyone acting on her behalf appeared at the hearing.
12. Because Ms. Hilliard did not appear and was not represented at the hearing, Staff's oral motion for default was granted.
13. On or about January 12, 2007, through January 29, 2007, while employed as a staff nurse with Bridgeway Health Services, Arlington, Texas, Ms. Hilliard initiated a change in treatment for Patient MP without a physician's order by changing the setting on a patient's wound vac from 125 mm/Hg to 175 mm/Hg. Ms. Hilliard's conduct resulted in non-efficacious care in that the wound closed over pockets of infectious matter resulting in wound abscess formation.
14. On or about January 12, 2007, through January 19, 2007, while employed as a staff nurse with Bridgeway Health Services, Arlington, Texas, Ms. Hilliard inappropriately altered and falsely documented in the medical record of Patient MP that she had not initiated a change in treatment by writing over previous documentation to reflect that the wound vac setting was 125 mm/Hg. Her conduct resulted in an inaccurate medical record which other caregivers would rely on to base further health care decisions.
15. On or about March 3, 2007, through April 16, 2007, while employed as a private duty nurse for the wife of Patient CB, Arlington, Texas, Ms. Hilliard inappropriately administered pureed food through the percutaneous endoscopic gastrostomy tube of Patient CB. Ms. Hilliard's conduct was likely to injure the patient in that infusing anything other than liquids through the tube can damage the tube and/or prevent the patient from receiving nutrition.
16. On or about September 22, 2008, while employed as a staff nurse with Atrium Medical Center, Denton, Texas, Ms. Hilliard engaged in the intemperate use of methamphetamine in that she produced a specimen for a drug screen that resulted positive for methamphetamine. The use of methamphetamine by a nurse while subject to call or duty could impair the nurse's ability to recognize subtle signs, symptoms, or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and

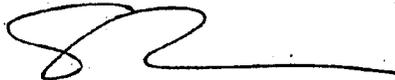
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appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter. TEX. OCC. CODE (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Notice of hearing on the merits was provided to Ms. Hilliard as required. TEX. GOV'T CODE §§ 2001.051 and 2001.052; 22 TEX. ADMIN. CODE § 213.10.
4. The Board had the burden of proving the case by a preponderance of the evidence.
5. The facts alleged in Staff's First Amended Formal Charges, which were attached to and incorporated by reference in the Notice of Hearing, were properly deemed admitted due to Ms. Hilliard's failure to appear at the hearing. 1 TEX. ADMIN. CODE § 155.501.
6. Possession of methamphetamine is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act) unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.
7. Ms. Hilliard is subject to discipline under Code § 301.452(b)(9), (10) and (13) and 22 TEX. ADMIN. CODE §§ 217.11(1)(A)-(D), 217.12(1)(B), (1)(C), (4), (5), (6)(A), (10)(A), 10(D), and (11)(B).
8. The Board should revoke Ms. Hilliard's nursing licenses.

SIGNED February 3, 2011.



SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS