

DOCKET NUMBER 507-10-3526

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 206616
ISSUED TO
LARRY HORACE OMONDI

§
§
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§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: LARRY HORACE OMONDI
3100 PINETREE, APT. A
LONGVIEW, TX 75604

PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on January 27-28, 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 vocational nursing license of Larry Horace Omondi without 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, if any, 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. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.



Paul D. Keeper
Executive Director of the Board

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.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 206616, previously issued to LARRY HORACE OMONDI, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 206616, previously issued to LARRY HORACE OMONDI, 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 nursing in the State of Texas.



Entered this 28th day of January, 2011.

TEXAS BOARD OF NURSING



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

Attachment: Proposal for Decision; Docket No. 507-10-3526 (August 18, 2010).

SOAH DOCKET NO. 507-10-3526

IN THE MATTER OF VOCATIONAL § BEFORE THE STATE OFFICE
NURSE LICENSE NO. 206616 ISSUED §
TO LARRY HORACE OMONDI, § OF
Respondent §
ADMINISTRATIVE HEARINGS §

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke Vocational Nurse License No. 206616 held by Larry Omondi (Respondent).¹ Staff alleged that Respondent pleaded guilty to the felony offense of abandoning a child. Staff seeks to recover costs associated with this proceeding. The administrative law judge (ALJ) recommends that Respondent's license be revoked but recommends denial of the assessment of costs.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Issues of notice and jurisdiction were not contested and are addressed in the findings of fact and conclusions of law. On July 13, 2010, State Office of Administrative Hearing (SOAH) administrative law judge (ALJ) Paul D. Keeper convened the hearing on the merits in Austin, Texas. Staff attorney John F. Legris represented the Board. Respondent represented himself. The hearing concluded and the record closed that day.

II. DISCUSSION

A. Facts

On November 20, 2008, Respondent was scheduled to take a college examination as part of his coursework to qualify for a license as a registered nurse. On the morning of the examination, Respondent's wife left their apartment to go to work. Respondent understood that

¹ Staff Ex. 1.

his brother-in-law would come to the apartment to watch his son, who was two years and eight months old. Before his brother-in-law arrived, Respondent left the apartment, leaving his son at home alone in front of the television. While the child was alone, an employee of a pest control service entered Respondent's apartment and discovered Respondent's son alone. The employee notified the apartment leasing office, and the apartment office manager called the Longview Police Department. The police contacted Respondent's wife, brother-in-law, and Respondent by telephone. After interviewing all involved, the Longview Police Department arrested Respondent for abandoning a child.²

On January 29, 2009, the grand jury of Gregg County, Texas, indicted Respondent for the intentional abandonment of a child, a state jail felony.³ On May 29, 2009, Respondent entered a plea of guilty to the charge.⁴ The district court of Gregg County issued an order deferring entry of a final criminal judgment pending Respondent's completion of a three-year term of community supervision, plus a payment of a fine and court costs.⁵

On January 29, 2009, Staff sent Respondent an investigatory letter about the events.⁶ On October 19, 2009, Staff notified Respondent of the formal administrative charges against him.⁷ On November 5, 2009, Respondent requested a contested case hearing before SOAH.⁸

At the hearing, the parties did not contest the basic facts in Staff's charges. Respondent testified that he reasonably believed that his brother-in-law would arrive shortly after Respondent left for school. Respondent explained that he had no intention of abandoning his son and that the incident was the result of poor communication between him and his brother-in-law. Respondent pointed out that the child protection officials returned custody of his son to him and his wife after the matter was resolved. Respondent called no witnesses other than himself.

² Staff Ex. 6 at 1.

³ *Id.*

⁴ *Id.* at 3

⁵ *Id.*

⁶ Staff Ex. 2.

⁷ Staff Ex. 3.

⁸ Staff Ex. 5.

Staff's witness, Denise Benbow, testified on the issue of professional responsibility. Ms. Benbow evaluated Respondent's actions that led to his arrest and prosecution. She concluded that under the Board's statutes and rules, Respondent's actions would constitute unprofessional conduct. Further, in light of the Board's Disciplinary Matrix and Disciplinary Guidelines, Ms. Benbow testified that the Board's policy would support revocation of Respondent's license.

In mitigation of the proposed sanction, Respondent testified that he did not knowingly leave his son alone. He also asserted that his instructors would say he is a good nurse and that he cares for his patients.

B. Applicable Law

Staff asserts Respondent's actions constitute grounds for disciplinary action under these provisions of the Texas Nursing Practice Act, TEX. OCC. CODE ANN. ch. 301 (Act), and the Board's rules, 22 TEX. ADMIN. CODE (TAC) ch. 217:

- A conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude. Act § 301.452(b)(3).
- Unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public. Act § 301.452(b)(10).
- Criminal Conduct – including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing. 22 TAC § 217.12(13).

B. Discussion

Respondent did not dispute that he pleaded guilty or that he received deferred adjudication and a term of probation for the crimes alleged by Staff. His defense in this proceeding was that: (1) he is regarded as a responsible person and a nurse of high quality and (2) there was some confusion in the communication between Respondent and his brother-in-law.

His defense does not overcome the significance of Staff's charges. Staff showed that Respondent's obligations to his patients require that he demonstrate the exercise of sound judgment. Respondent's leaving his son alone, based on an unconfirmed understanding that an adult would eventually arrive, demonstrates an unacceptable level of responsibility, lack of sound judgment, and unprofessional behavior. The Act provides for revocation of a license if a nurse is placed on deferred adjudication for a felony. The Board's Disciplinary Matrix and its Disciplinary Guidelines for Criminal Conduct confirm this result. The Board has the authority to revoke Respondent's license, and the facts warrant revocation.

Staff asked that administrative costs be assessed against Respondent. Staff did not provide evidence of those costs. The ALJ finds that no administrative costs should be assessed against the Respondent.

III. FINDINGS OF FACT

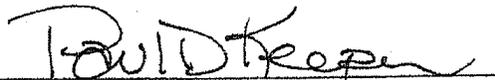
1. Larry Horace Omondi (Respondent) holds Vocational Nurse License No. 206616 issued by the Texas Board of Nursing (Board).
2. On November 20, 2008, Respondent was arrested by the Longview Police Department and charged with abandonment of a child.
3. On January 29, 2009, the Gregg County grand jury indicted Respondent for abandoning a child, a state jail felony.
4. On May 29, 2009, under the terms of a plea agreement, Respondent entered a plea of guilty to the charge of abandoning a child.
5. The district court of Gregg County entered an order of deferred adjudication against Respondent and placed Respondent on community supervision for three years, including an order to pay a fine and court costs.
6. On January 29, 2009, staff of the Board notified Respondent that it intended to revoke Respondent's license.
7. Respondent timely requested a hearing.

8. On April 5, 2010, the Board mailed a Notice of Administrative Hearing to Respondent. The notice 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.
9. The hearing on the merits was held on July 13, 2010. All parties appeared and participated in the hearing. The record closed that same day.
10. Respondent's leaving his son alone, based on an unconfirmed understanding that an adult would eventually arrive, demonstrates an unacceptable level of responsibility, lack of sound judgment, and unprofessional behavior.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE ANN. ch. 301.
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. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. ch. 2001; 22 TEX. ADMIN. CODE § 213.10.
4. A nurse is subject to discipline for conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude. TEX. OCC. CODE ANN. § 301.452(b)(3).
5. A nurse is subject to discipline for unprofessional conduct likely to deceive, defraud, or injure clients or the public. TEX. OCC. CODE ANN. § 301.452(b)(10).
6. Abandoning a child is a state jail felony. TEX. PEN. CODE ANN. § 22.041.
7. The Board is required to revoke the license of an individual who pleads guilty to the crime of abandoning a child. TEX. OCC. CODE ANN. § 301.4535(a) and (b).
8. Under the Board's Disciplinary Matrix and its Disciplinary Guidelines for Criminal Conduct, the actions taken by Respondent warrant revocation of Respondent's license.
9. The Board should revoke Respondent's Vocational Nurse License No. 206616.

SIGNED on August 18, 2010.

A handwritten signature in black ink, appearing to read "Paul D. Keeper", written over a horizontal line.

PAUL D. KEEPER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS