

DOCKET NUMBER 507-10-4823



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.
Patricia P. Roman
Executive Director of the Board

IN THE MATTER OF § BEFORE THE STATE OFF
PERMANENT CERTIFICATE §
NUMBER 711064 § OF
ISSUED TO §
CANNON LAMAR TUBB § ADMINISTRATIVE HEARII

OPINION AND ORDER OF THE BOARD

TO: CANNON LAMAR TUBB
P.O. BOX 40104
ALBUQUERQUE, NM 87195

CANNON LAMAR TUBB
P.O. BOX 1211
CANADIAN, TX 79014

ROY G. SCUDDAY
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 registered nursing license of Cannon Lamar Tubb 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, 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, with the exception of Finding of Fact Number 1, which is modified to correct a technical error, and Conclusion of Law Number 7, which is not adopted by the Board because it is not a proper conclusion of law. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Finding of Fact Number 1

The Government Code §2001.058(e)(3) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or vacate or modify an order issued by the ALJ, if the Board determines that a technical error in a finding of fact should be changed. The ALJ incorrectly cites the Respondent's registered nurse license number in Finding of Fact Number 1. In order to correctly reference the Respondent's registered nurse license number, Finding of Fact Number 1 should be modified to reflect "711064" instead of "125410".

IT IS, THEREFORE, ORDERED THAT the PFD signed on September 27, 2010, is hereby MODIFIED under the authority of the Government Code §2001.058(e) for the reasons outlined above, in order to correct a technical error in Finding of Fact Number One.

AMENDED FINDING OF FACT NUMBER ONE

IT IS FURTHER ORDERED THAT FINDING OF FACT NUMBER ONE is AMENDED and ADOPTED as follows:

1. Cannon Lamar Tubb (Respondent) holds License Number 711064 issued by the Texas Board of Nursing (Board/Staff).

Conclusion of Law Number 7

The Government Code §2001.058(e) also 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 he included his 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 7 because it is a recommended sanction and not a proper conclusion of law. Further, the Board retains the authority to determine the final sanction in this matter. The Board believes that disciplinary action in this matter is warranted based upon the adopted Findings of Fact and Conclusions of Law. The Board

agrees with the ALJ that the Respondent's license should be suspended. A suspension of the Respondent's license is warranted under the Board's Disciplinary Matrix, located at 22 Tex. Admin. Code §213.33(b), for a second tier, sanction level II, violation of the Occupations Code §301.452(b)(10). This sanction level is appropriate when considering that the Respondent's conduct exhibited evidence of potential harm to patients and the public, repeated acts of misconduct, and a question of his fitness to practice, as is set out in Finding of Fact Number 8. However, the ALJ erred in applying applicable law and the Board's rules, written policies, and prior administrative decisions when he failed to specify whether (i) such suspension should be probated or enforced and (ii) whether probationary stipulations should be imposed against the Respondent. The Board finds that the Respondent's license should be suspended, that the suspension should be fully probated, and that probationary stipulations should be imposed against the Respondent. This sanction is consistent with Board rules, written policies, and prior administrative decisions. First, 22 Tex. Admin. Code §213.33(b) authorizes the imposition of probationary conditions, such as Board monitoring and supervised practice, for a second tier, sanction level II offense of the Occupations Code §301.452(b)(10). Further, if criminal conduct involving drugs or controlled substances is at issue, as is set out in Findings of Fact Numbers 6 and 7, §213.33(b) authorizes the imposition of probationary stipulations that require abstention from the unauthorized use of drugs and alcohol and random drug testing. Second, 22 Tex. Admin. Code §213.33(e)(6) authorizes the Board to impose reasonable probationary stipulations in disciplinary matters involving the suspension of a license. Finally, the Board's Disciplinary Sanctions for Fraud, Theft, and Deception provide that the minimum allowed sanction for offenses involving fraud, deceit, or deception that results in harm or potential harm to another person will be the individual's removal from practice in an independent setting and the imposition of probationary stipulations. The Respondent's

conduct exhibited evidence of potential harm to patients and the public, as is set out in Finding of Fact Number 8. Therefore, the Board declines to adopt Conclusion of Law Number 7, as it is not consistent with the Board's rules, policies, and prior administrative decisions .

IT IS THEREFORE ORDERED that Registered Nurse License Number 711064, previously issued to CANNON LAMAR TUBB, to practice professional nursing in Texas is hereby SUSPENDED for a period of two (2) years, with the suspension STAYED, and Respondent is hereby placed on PROBATION for two (2) years with the following agreed terms of probation:

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 is encumbered by this order, the 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 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.

(2) 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 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>.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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>.

(4) RESPONDENT SHALL pay a monetary fine in the amount of seven

hundred fifty (\$750) dollars. RESPONDENT SHALL pay this fine within forty five (45) days of the suspension being stayed. 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 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 PROBATIONARY CONDITIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY 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) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(5) RESPONDENT SHALL notify each present employer in 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 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 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 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.

(7) For the duration of the probation period, RESPONDENT SHALL be supervised by a Registered 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.

(8) 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 Registered 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) years of employment as a nurse.

(9) 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.**

(10) 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. 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 probation 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 probation 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 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 ORDERED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

Entered this 28th day of January, 2011.



TEXAS BOARD OF NURSING

Katherine A. Thomas

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

Attachment: Proposal for Decision; Docket No. 507-10-4823 (September 27, 2010).

SOAH DOCKET NO. 507-10-4823

TEXAS BOARD OF NURSING,
Petitioner

vs.

CANNON LAMAR TUBB,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Cannon Lamar Tubb (Respondent) for violating TEX. OCC. CODE ANN. (Code) § 301.452(b)(10) and 22 TEX. ADMIN. CODE (TAC) §§ 217.12(10)(E) and (11)(B). Staff sought to suspend Respondent's license and sought to impose on Respondent administrative costs of the proceeding pursuant to Code § 301.461. The Administrative Law Judge (ALJ) recommends that Respondent's license be suspended.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened September 14, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Nikki R. Hopkins, Assistant General Counsel. Respondent appeared on his own behalf. The record closed on September 17, 2010.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. REASONS FOR DECISION

A. Background

Respondent is licensed as a Registered Nurse (RN). On June 19, 2009, Staff sent Respondent notice that it had filed Formal Charges against Respondent. On June 28, 2009, Staff sent Respondent its Notice of Hearing.

B. Staff's Charges

Staff alleged four charges against Respondent but at the hearing dropped the first charge. The remaining charges are as follows:

- 1) On May 20, 2008, Respondent obtained 120 tablets of BactrimDS from Walgreens Pharmacy Number 5410, Baltimore, Maryland, through Express Scripts Pharmacy Services, St. Louis, Missouri, by submitting an unauthorized prescription from King's Daughters Clinic, Temple, Texas, with the name of Nathan Wood, MD, as the prescribing physician, in violation of Chapter 483 of the Texas Health and Safety Code (Dangerous Drug Act), Code § 301.452(b)(10), and 22 TAC §§ 217.12(10)(E).
- 2) On October 8, 2008, Respondent attempted to obtain 30 tablets of Alprazolam 2 mg. with two refills through Express Scripts Pharmacy Services, St. Louis, Missouri, by submitting an unauthorized and fraudulent prescription from King's Daughters Clinic, Temple, Texas, with the name of Nathan Wood, MD, in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substance Act), Code § 301.452(b)(10), and 22 TAC §§ 217.12(10)(E) and (11)(B).
- 3) On November 19, 2008, Respondent obtained 120 tablets of BactrimDS from Walgreens Pharmacy Number 11959, Albuquerque, New Mexico, through Express Scripts Pharmacy Services, St. Louis, Missouri, by submitting an unauthorized prescription from King's Daughters Clinic, Temple, Texas, with the name of Nathan Wood, MD, in violation of Chapter 483 of the Texas Health and Safety Code (Dangerous Drug Act), Code § 301.452(b)(10), and 22 TAC §§ 217.12(10)(E).

C. Evidence

Staff submitted multiple exhibits and provided the testimony of Respondent, and of Bonnie Cone, Nursing Practice Consultant for the Board. Respondent testified on his own behalf.

1. Undisputed Facts

Respondent has been a RN since 2004. In 2008, Respondent received from a friend several blank prescriptions signed by Dr. Nathan Wood on King's Daughters Clinic prescription forms.

Respondent filled out one of the prescription forms for 120 tablets of Bactrim DS with two refills. He then submitted the prescription form on May 20, 2008, and ordered a refill on November 19, 2008. Respondent used the prescription for his personal use. On October 8, 2008, Respondent filled out another of the blank prescription forms for 30 tablets of Alprazolam 2 mg. to give to his mother. However, the pharmacy refused to fill the prescription.

2. Respondent's Testimony

Respondent admitted that he was not a patient of Dr. Wood or of the King's Daughters Clinic and that he used the forms provided by his friend to get Bactrim for his use. He denied that he fraudulently sought to get the Alprazolam for his mother because he was shown as the patient on the form, and did not actually get the tablets. Respondent testified that at no time did he seek to secure unauthorized prescriptions in a clinical venue.

3. Bonnie Cone's Testimony

Ms. Cone has been a Registered Nurse for 20 years with experience in diverse areas including critical care, nurse education, and regulation. As a Nurse Practicing Consultant for the Board, Ms. Cone assists the Enforcement and Legal Divisions with case reviews and testifies as an expert witness in State Office of Administrative Hearings (SOAH) hearings.

Ms. Cone testified that obtaining drugs from an unauthorized prescription deceives the public and is a violation of the Code and the Board Rules. She testified, based on the Board's Disciplinary Matrix, that because there were repeated incidents of using unauthorized prescriptions, the suspension of Respondent's license was the appropriate sanction.

D. Analysis and Recommendation

1. Legal Standards

Code Chapter 301 is the Nursing Practice Act (the Act) that regulates professional and vocational nurses. The Board may suspend a nurse's license if the person engaged in "unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public."¹

The Board rules provide that unprofessional conduct includes "obtaining or attempting to obtain or deliver medication(s) thorough means of misrepresentation, fraud, forgery, deception and/or subterfuge,"² and "violating a state or federal narcotics or controlled substance law...."³ Sec. 481.129(a)(5) of the TEX. HEALTH & SAFETY CODE provides that it is a violation if a person "attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance . . . by misrepresentation, fraud, forgery, deception, or subterfuge;" or "through use of a fraudulent prescription form." Alprazolam is classified as a Penalty Group 3 controlled substance.⁴

2. Specific Charges

Respondent admitted to having violated Code § 301.452(b)(10) and TAC §§ 217.12(10)(E) when he obtained the Bactrim through the fraudulent prescription forms. In addition, Respondent testified that he attempted to obtain the Alprazolam using a prescription form with Dr. Wood's signature, even though he was not a patient of Dr. Wood and Respondent himself had filled out the form. Such actions are violations of TEX. HEALTH & SAFETY CODE §481.129(a)(5), and, thereby, violations of Code § 301.452(b)(10) and TAC §§ 217.12(10)(E) and (11)(B).

¹ Code § 301.452(b)(10).

² 22 TAC § 217.12(10)(E).

³ 22 TAC § 217.12(11)(B).

⁴ TEX. HEALTH & SAFETY CODE § 481.104(a)(2).

3. Recommended Sanctions

Staff argues that the only appropriate sanction for Respondent's violations is suspension of his license for a period of two to three years.

The Board rule at 22 TAC § 213.33 provides factors to be considered for imposition of sanctions including the following:

- 1) evidence of actual or potential harm to patients, clients, or the public;
- 2) evidence of a lack of truthfulness or trustworthiness;
- 3) evidence of misrepresentation(s) of knowledge, education, experience, credentials, or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- 4) evidence of practice history;
- 5) evidence of present fitness to practice;
- 6) evidence of previous violations or prior disciplinary history by the Board or any other health care licensing agency in Texas or another jurisdiction;
- 7) the length of time the licensee has practiced;
- 8) the actual damages, physical, economic, or otherwise, resulting from the violation;
- 9) the deterrent effect of the penalty imposed;
- 10) attempts by the licensee to correct or stop the violation;
- 11) any mitigating or aggravating circumstances;
- 12) the extent to which system dynamics in the practice setting contributed to the problem; and
- 13) any other matter that justice may require.

Ms. Cone asserted that Respondent's misconduct exhibited evidence of potential harm to patients and the public, repeated acts of misconduct, and a question of his fitness to practice. For these reasons, Ms. Cone asserted that a two- or three-year suspension was the appropriate sanction.

After reviewing the evidence and arguments of the parties, the ALJ recommends that Respondent's license be suspended for a period of two years.

Staff also sought the administrative costs of this proceeding pursuant to Code § 301.461. However, although the record was held open for Staff to provide documentation to support its claim for costs, that documentation was not filed before the record closed. As a result, no costs should be imposed.

III. FINDINGS OF FACT

1. Cannon Lamar Tubb (Respondent), holds License Number 125410 issued by the Texas Board of Nursing (Board/Staff).
2. On June 19, 2009, Staff sent Respondent notice that it had filed Formal Charges against Respondent. On June 28, 2009, Staff sent Respondent its Notice of Hearing.
3. 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.
4. The hearing on the merits was held on September 14, 2010, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties appeared and participated in the hearing. The record closed at the conclusion of the hearing on that date.
5. Respondent has been a Registered Nurse (RN) since 2004.
6. On May 20, 2008, Respondent submitted a King's Daughters Clinic prescription form signed by Dr. Nathan Wood for 120 tablets of Bactrim DS with two refills. Respondent ordered a refill of the prescription on November 19, 2008. The Bactrim was for Respondent's personal use although Respondent was not a patient of Dr. Wood or the King's Daughters Clinic. Respondent had received several blank King's Daughters Clinic prescription forms signed by Dr. Wood from a friend.
7. On October 8, 2008, Respondent filled out another of the blank prescription forms for 30 tablets of Alprazolam 2 mg to give to his mother. However, the pharmacy refused to fill the prescription.
8. Respondent's actions exhibited evidence of potential harm to patients and the public, repeated acts of misconduct, and a question of his fitness to practice.
9. Staff failed to timely submit documentation in support of the imposition on Respondent of the administrative costs of this proceeding pursuant to Code § 301.461.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (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, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the formal charges and of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Staff had the burden of proving the case by a preponderance of the evidence.
5. Based on Findings of Fact Nos. 5 and 6, Respondent violated Code § 301.452(b)(10) and 22 TEX. ADMIN. CODE (TAC) § 217.12(10)(E).
6. Based on Findings of Fact Nos. 5 and 7, Respondent violated Code § 301.452(b)(10) and 22 TAC § 217.12(10)(E) and (11)(B).
7. Based upon Findings of Fact Nos. 5-8, Conclusions of Law Nos. 5 and 6, and the factors for consideration of sanctions set forth in 22 TAC § 213.33, the Board should suspend Respondent's license for a period of two years.
8. Based upon Finding of Fact No. 9, the administrative costs of this proceeding should not be imposed on Respondent.

SIGNED September 27, 2010.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS