DOCKET NUMBER 507-10-3551

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 119434	§	OF
ISSUED TO	§	
CYNTHIA RENEE SPENCER	§	ADMINISTRATIVE HEARINGS

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

OPINION AND ORDER OF THE BOARD

TO: CYNTHIA RENEE SPENCER
916 MATAGORDA LANE
DESOTO, TX 75115

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 21-22, 2010, 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 Cynthia Renee Spencer 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.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 119434, previously issued to CYNTHIA RENEE SPENCER, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 119434, previously issued to CYNTHIA RENEE SPENCER, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

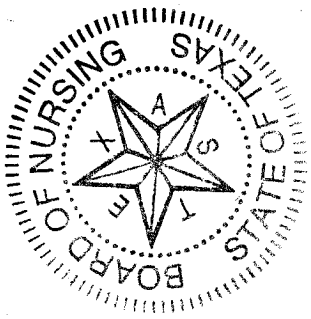
IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privilege, if any, to practice nursing in the State of Texas.

Entered this 22nd day of October, 2010.

TEXAS BOARD OF NURSING

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

Attachment: Proposal for Decision; Docket No. 507-10-3551 (July 15, 2010).



State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 15, 2010

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

VIA INTER-AGENCY

RE: Docket No. 507-10-3551; In the Matter of Permanent Certificate No. 119434 Issued to Cynthia Renee Spencer

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,

Richard R. Wilfong /sb

Richard R. Wilfong
Administrative Law Judge

RRW/sb
Enclosures
cc: R. Kyle Hensley, TBN, 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 and Certified Evidentiary Record) – **VIA INTER-AGENCY**
Cynthia Renee Spencer, 916 Matagorda Lane, Desoto, TX 75115-**VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3551

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 119434 ISSUED TO	§	OF
	§	
CYNTHIA RENEE SPENCER	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action seeking revocation of the vocational nurse's license of Cynthia Renee Spencer (Respondent). Staff alleges that Respondent is subject to discipline under several provisions of the Nursing Practice Act[1] and the Board's rules.[2]

The hearing on the merits was held on July 13, 2010. Respondent failed to appear. Staff moved for default. In support of its motion, Staff offered proof that proper notice of the hearing had been provided. The Administrative Law Judge (ALJ) grants Staff's motion for default. Accordingly, Staff's allegations are deemed admitted as true.[3] The ALJ recommends that Respondent's license be revoked.

I. FINDINGS OF FACT

1. Cynthia Renee Spencer (Respondent) holds permanent vocational nurse license number 119434 issued by the Texas Board of Nursing (Board).

2. On August 27, 2009, the staff of the Board (Staff) sent formal charges to Respondent by Certified U.S. Mail to her official address on record with the Board.

3. On April 8, 2010, Staff sent its Notice of Hearing of the July 13, 2010, hearing to Respondent by Certified U.S. Mail to her official address on record with the Board.

4. On June 23, 2010, Staff sent its First Amended Notice of Hearing to Respondent by Certified U.S. Mail to her official address on record with the Board.

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[1] TEX. OCC. CODE ANN. ch. 301(the Nursing Practice Act).

[2] 22 TEX. ADMIN. CODE part 11.

[3] 1 TEX. ADMIN. CODE § 155.501.

5. The Notices 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.

6. The Notices of Hearing stated, in at least 12-point bold-faced font, that "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."

7. The hearing on the merits was convened at 9:00 a.m. on July 13, 2010, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Austin, Texas.

8. Staff appeared at the hearing through its Assistant General Counsel, R. Kyle Hensley. Respondent did not appear, was not represented at the hearing, and did not provide an explanation for her failure to appear.

9. Staff made a motion for default and offered evidence demonstrating jurisdiction and proper notice.

10. Staff's motion for default was granted.

11. The allegations in Staff's Notices of Hearing are deemed true.

12. On or about April 2, 2007 through May 26, 2007, while employed as a licensed vocational nurse with Epic Med Staff, Inc., in Dallas, Texas, and Medical Staffing Network in Dallas, Texas, Respondent submitted fraudulent and falsified patient home health medical records, which included time records, in order to be reimbursed by both Epic Med Staff and Medical Staffing Network for home health visits that indicated overlapping dates and times.

13. Respondent's conduct as described in the above Finding of Fact was deceiving to both Medical Staffing Network and Epic Medical Staffing.

14. On or about April 2, 2007 through May 25, 2007, and employed with Epic Med Staff, Inc., and Medical Staffing Network in Dallas, Texas, Respondent violated nurse/client boundaries in that she allowed Patient A and Patient B to live in her residence temporarily. Additionally, Respondent provided nursing care to Patient A and Patient B while they resided in her home.

15. Respondent's conduct as described in the above Finding of Fact was a violation of nurse/client boundaries which is likely to cause delayed distress for the client, that may not be recognized or felt until harmful consequences occur.

16. Respondent was previously disciplined by the Board for misconduct through Agreed Board Orders issued on May 21, 1991, and December 22, 2006.

II. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. TEX. OCC. CODE 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 ch. 2003.

3. Proper and timely notice of the hearing was provided. TEX. GOV'T CODE ch. 2001; 22 TEX. ADMIN. CODE § 213.10.

4. Because of Respondent's failure to appear at the hearing despite being provided proper notice, default is appropriate and the allegations in Staff's Notices of Hearing are deemed admitted. 1 TEX. ADMIN. CODE § 155.501.

5. Respondent's conduct as described in Finding of Fact No. 12 constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE § 301.452(b)(10), and is a violation of 22 TEX. ADMIN. CODE § 217.12(6)(A), (4) & (G).

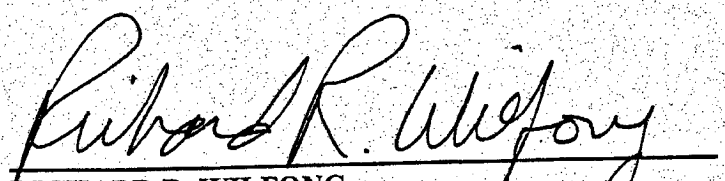
6. Respondent's conduct as described in Finding of Fact No. 14 constitutes grounds for disciplinary action in accordance with TEX. OCC. CODE § 301.452(b)(10) & (13) and is a violation of 22 TEX. ADMIN. CODE §§ 217.11(1)(J) and 217.12(6)(D).

7. The Board is authorized to revoke Respondent's license. TEX. OCC. CODE § 301.4531, and 22 TEX. ADMIN. CODE §§ 213.27 – 213.33.

III. RECOMMENDATION

The Board should revoke Respondent's license to practice vocational nursing in Texas.

SIGNED July 15, 2010.



RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS