DOCKET NUMBER 507-10-3138

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER 67174	§	**OF**
ISSUED TO	§	
PHYLLIS K. LUNA	§	**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: PHYLLIS K. LUNA
2817 SOUTHGATE DRIVE
FORT WORTH, TX 76133

ROY G. SCUDDAY
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 Phyllis K. Luna 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 67174, previously issued to PHYLLIS K. LUNA, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 67174, previously issued to PHYLLIS K. LUNA, 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

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

Attachment: Proposal for Decision; Docket No. 507-10-3138 (July 7, 2010).

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 7, 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. 507-10-3138; In the Matter of Permanent Certificate No. 67174 Issued to Phyllis K. Luna

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,

Roy G. Scudday
Administrative Law Judge

RGS/sb
Enclosures
XC: Jena Abel, 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 hearing CD and Certified Evidentiary Record) – **VIA INTER-AGENCY**
Phyllis K. Luna, 2817 Southgate Drive, Fort Worth, TX 76133 – **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-3138

IN THE MATTER OF PERMANENT	§	BEFORE THE STATE OFFICE
	§	
CERTIFICATE NO. 67174 ISSUED TO	§	OF
	§	
PHYLLIS K. LUNA	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Phyllis K. Luna (Respondent) seeking to revoke Respondent's license as a vocational nurse pursuant to TEX. OCC. CODE ANN. (Code) § 301.452(b). The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened on June 29, 2010, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Jena Abel, Assistant General Counsel, who moved for a default based on the failure of Respondent to appear.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. RECOMMENDATION

Based upon the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ granted Staff's motion for default and recommends that Respondent's vocational nursing license be revoked.

III. FINDINGS OF FACT

1. Phyllis K. Luna (Respondent) is licensed as a vocational nurse and holds License No. 67174 issued by the Texas Board of Nursing (Staff/Board).

2. On March 23, 2010, Staff notified Respondent of the First Amended Formal Charges that had been filed against her.

3. On March 23, 2010, Staff mailed its Notice of Hearing to Respondent at 2817 Southgate Drive, Ft. Worth, Texas 76133 by United States Post Office certified mail. Receipt of the certified mailing was signed for by Respondent on March 29, 2010.

4. 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.

5. 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 FIRST AMENDED FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT."

6. Respondent did not appear and was not represented at the hearing, and the factual allegations set forth in the First Amended Formal Charges were deemed admitted.

7. On or about September 30, 2007, while employed as a vocational nurse with Huguley Memorial Hospital, Fort Worth, Texas, Respondent administered Potassium Chloride 40 meg IV to Patient (Medical Record Number 6077613) in excess of the Physician's order in that she administered it at a rate four (4) times faster than ordered. Respondent's conduct was likely to injure the patient in that the administration of Potassium Chloride in excess frequency and/or dosage of the physician's order could result in the patient's suffering adverse reactions.

8. On or about September 30, 2007, while employed as a vocational nurse with Huguley Memorial Hospital, Fort Worth, Texas, Respondent engaged in the intemperate use of Ativan in that she produced a specimen for a reasonable suspicion/cause urine drug screen which resulted positive for Ativan. The use of Ativan by a Licensed Vocational 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 appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

9. On or about September 30, 2007, while employed as a vocational nurse with Huguley Memorial Hospital, Fort Worth, Texas, Respondent may have lacked fitness to practice vocational nursing in the State of Texas in that she exhibited impaired behavior, including, but not limited to: slurred speech, difficulty maintaining balance, disoriented

look and apparent lethargy. Respondent's condition could have affected her ability to recognize subtle signs, symptoms or changes in the patient's condition, and could have impaired the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nurses (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. Because of Respondent's failure to appear at the hearing despite being provided proper notice, the factual allegations set forth in the Notice of Hearing and complaint are deemed admitted as true, pursuant to 1 TEX. ADMIN. CODE ANN. (TAC) § 155.501.

5. Staff of the Board had the burden of proving the case by a preponderance of the evidence.

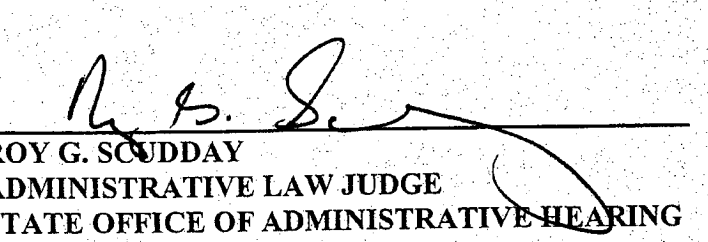
6. Based on Finding of Fact No. 7, Respondent violated Code § 301.452(b)(10) and (13) and 22 TEX. ADMIN. CODE (TAC) §§ 217.11(1)(A), (B), and (C), and 217.12(1)(B) and (4).

7. Based on Finding of Fact No. 8, Respondent violated Code § 301.452(b)(9) and (10) and 22 TAC § 217.12(1)(E), (4), (5) and (10)(A).

8. Based on Finding of Fact No. 9, Respondent violated Code § 301.452(b)(10) and (12) and 22 TAC § 217.12(1)(E), (4), (5) and (10)(A).

9. Based upon Findings of Fact Nos. 7-9 and Conclusions of Law Nos. 6-8, the Board should revoke Respondent's vocational nurse license.

SIGNED July 7, 2010



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