



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.
Richard R. Wilfong
Executive Director of the Board

DOCKET NUMBER 507-10-1615

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 158185
ISSUED TO
MARTHA E. MALLORY**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: MARTHA E. MALLORY
8211 MONANA AVENUE
AUSTIN, TX 78717**

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

At the regularly scheduled public meeting on July 22-23, 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 Martha E. Mallory 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 158185, previously issued to MARTHA E. MALLORY, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 158185, previously issued to MARTHA E. MALLORY, 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 23rd day of July, 2010.

TEXAS BOARD OF NURSING

Katherine A. Thomas

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

Attachment: Proposal for Decision; Docket No. 507-10-1615 (March 30, 2010).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 30, 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. 507-10-1615; In the Matter of Permanent Certificate No. 158185 Issued to Martha E. Mallory

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 that reads "Richard R. Wilfong".

Richard R. Wilfong
Administrative Law Judge

RRW/sb
Enclosures

xc: R. Kyle Hensley, Assistant General Counsel, 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 Certified Evidentiary Record) – **VIA INTER-AGENCY**
Martha E. Mallory, 8211 Monana Ave., Austin, TX 78717 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-10-1615

IN THE MATTER OF PERMANENT § BEFORE THE STATE OFFICE
CERTIFICATE NO. 158185 § OF
ISSUED TO MARTHA E. MALLORY § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action seeking revocation of the nurse's license of Martha E. Mallory (Respondent). Staff alleges that Respondent is subject to discipline under several provisions of the Nursing Practice Act¹ and the Board's rules.²

The hearing on the merits was held on March 24, 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. Martha E. Mallory (Respondent) holds permanent nurse license number 158185 issued by the Texas Board of Nursing (Board).
2. On November 25, 2008, 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 December 5, 2008, Respondent's attorney filed Respondent's Original Answer to Formal Charges.
4. On December 7, 2009, Staff sent its Notice of Hearing of the March 24, 2010, hearing to Respondent's attorney by Certified U.S. Mail.

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. On December 17, 2009, Respondent's attorney filed Respondent's Original Answer in this proceeding.
6. On January 29, 2010, Respondent's attorney filed a Motion to Withdraw as Attorney for Respondent, and a copy was sent to Ms. Mallory at her official address on record with the Board by First Class and Certified U.S. Mail.
7. On February 3, 2010, the Administrative Law Judge issued Order No. 1 granting the Motion to Withdraw as Attorney for Respondent filed by Ms. Mallory's attorney.
8. On March 3, 2010, Staff sent its First Amended Notice of Hearing to Respondent's attorney.
9. On March 9, 2010, Staff sent its Second Amended Notice of hearing to Respondent by First Class and Certified U.S. Mail to Respondent's official address on record with the Board.
10. 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.
11. 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."
12. The hearing on the merits was convened at 9:00 a.m. on March 24, 2010, at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15th Street, Austin, Texas.
13. 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.
14. Staff made a motion for default and offered evidence demonstrating jurisdiction and proper notice.
15. Staff's motion for default was granted.
16. The allegations in Staff's Notices of Hearing are deemed true.
17. On or about March 10, 2008 through March 15, 2008, while employed as a licensed vocational nurse with Cornerstone Hospital, Austin, Texas, Respondent withdrew medications from AcuDose medication dispensing system for patients in excess of the frequency and/or dosage of the physician's orders.

18. Respondent's conduct as described in Finding of Fact No. 17 was likely to injure the patients in that the administration of medications in excess of the frequency and/or dosage of the physician's orders could result in the patients suffering from adverse reactions.
19. On or about March 10, 2008 through March 16, 2008, while employed as a licensed vocational nurse with Cornerstone Hospital, Austin, Texas, Respondent withdrew medications from the AcuDose medication dispensing system for patients, but failed to document, and/or accurately document, the administration of the medications in the patient's Medication Administration Records and/or nurse's notes.
20. Respondent's conduct as described in Finding of Fact No. 19 was likely to injure the patients in that subsequent care givers would rely on her documentation to further medicate the patients which could result in an overdose.
21. On or about March 10, 2008 through March 16, 2008, while employed as a licensed vocational nurse with Cornerstone Hospital, Austin, Texas, Respondent withdrew medications from the AcuDose medication system for patients, but failed to follow the facility's policy and procedure for the wastage of the unused portions of the medications.
22. Respondent's conduct as described in Finding of Fact No. 21 was likely to deceive the hospital pharmacy and place it in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
23. On or about March 10, 2008 through March 16, 2008, while employed as a licensed vocational nurse with Cornerstone Hospital, Austin, Texas, Respondent misappropriated Oxycodone, Hydromorphone, Alprazolam, Lorazepam, Lyrica, Morphine, Methadone, Darvocet and Diazepam from the facility and patients thereof, or failed to take precautions to prevent such misappropriation.
24. Respondent's conduct as described in Finding of fact No. 23 was likely to defraud the facility and patients of the cost of the medications.

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 Notice of Hearing are deemed admitted. 1 TEX. ADMIN. CODE § 155.501.
5. Respondent's conduct as described in Finding of Fact No. 17 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)(B) & (C) and 217.12(1)(A), (4) & (11)(B).
6. Respondent's conduct as described in Finding of Fact No. 19 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)(B) & (D) and 217.12(1)(A), (4), (10)(B) & (11)(B).
7. Respondent's conduct as described in Finding of Fact No. 21 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(10)(C) & (11)(B).
8. Respondent's conduct as described in Finding of Fact No. 23 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)(G) & (11)(B).
9. The Board is authorized to revoke Respondent's license. TEX. OCC. CODE § 301.453.

III. RECOMMENDATION

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

SIGNED March 30, 2010.



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