State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

September 13, 1999

Katherine A. Thomas
Executive Director
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

HAND DELIVERY

RE: Docket No. 507-99-1072; In the Matter of Permanent Certificate of Cindy Lee Spence; Certificate No. 564343

Dear Ms. Thomas:

Enclosed please find a Proposal for Decision and a proposed Order in the above-referenced cause for the consideration of the Board of Nurse Examiners. Copies of the Proposal and Proposed Order are being sent to James Johnston, Assistant General Counsel for the Board and Cindy Lee Spence. For reasons discussed in the Proposal, I have recommended a default judgement be entered against Respondent and Respondent's permanent certificate be revoked.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the Proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Board according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

Henry D. Card
Senior Administrative Law Judge

HDC/dms
Enclosures
cc: James Johnston, Assistant General Counsel for the Board, General Counsel, Board of Nurse Examiners, 333 Guadalupe, Tower III, Suite 450, Austin, Texas 78701 - **HAND DELIVERY**
Cindy Lee Spence, Route 4, Box 780,, Marshall, Texas 75670 - **CERTIFIED MAIL NO. Z 407 856 616, RETURN RECEIPT REQUESTED**
Rommel Corro, Docket Clerk, State Office of Administrative Hearings - **HAND DELIVERY**

William P. Clements Building
Post Office Box 13025 ◆ 300 West 15th Street, Suite 502 ◆ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

In the Matter of Permanent Certificate	§	
Number 564343 issued to	§	AGREED ORDER
CINDY LEE SPENCE	§	

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of CINDY LEE SPENCE, license number 564343, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Article 4525(b)(3)(8) & (12) revised Civil Statutes of Texas, as amended. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on May 19, 1998, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.

3. Respondent received an Associate Degree in Nursing from Kilgore College on May 17, 1990.

4. Respondent's professional employment history includes:

1989 - 1993	Staff Nurse/ER Good Shepard Medical Center Longview, Texas
February 1994 - June 1994	Office Nurse Dr. Mark Littlejohn Longview, Texas

Respondent's professional employment history continued:

June 1994 - March 24, 1995	Staff Nurse Longview Regional Hospital Longview, Texas
March 24, 1995 - Present	Unknown

5. At the time of the incident in finding of fact number six (6), Respondent was employed as a Staff Nurse with Longview Regional Hospital, Longview, Texas and had been in this position for nine (9) months.

6. On or about March 23, 1995, while employed with Longview Regional Hospital, Longview, Texas, Respondent discharged a patient without a physician's order and with no discharge instructions. The patient had been admitted with chest pain and had undergone a cardiac catheterization. The physician reported that he could not find the patient at 5:30 p.m. and the patient was called back to the hospital at 6:30 p.m. to be discharged properly. Respondent's conduct exposed the patient unnecessarily to a risk of suffering from post operative complications.

7. On or about November 25, 1997, Respondent's probation was revoked and she was convicted of possession of less than one (1) gram of a controlled substance, namely: Cocaine, in the 147th Judicial District Court of Travis County, Texas, cause number 0970042.

8. Respondent, on or about June 13, 1997, engaged in the intemperate use of Cocaine. Respondent produced a specimen for a drug screen which resulted positive for Cocaine. Possession of Cocaine is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substance Act). The use of Cocaine by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patients'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. Respondent, on or about June 13, 1997, engaged in the intemperate use of Alcohol. Respondent produced a specimen for a drug screen which resulted positive for Alcohol. The use of Alcohol, by a Registered Nurse, while subject to duty or call, could impair a 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, judgements and decisions regarding patient care, thereby placing the patient in potentional danger.

CONCLUSIONS OF LAW

1. Pursuant to Article 4525, Revised Civil Statutes of Texas, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Article 4525(b)(3),(8) & (12) TEX. REV. CIV. STAT. ANN., and 22 TEX. ADMIN. CODE §217.11(12).

4. The evidence received is sufficient cause pursuant to Article 4525(b), TEX. REV. CIV. STAT. ANN., to take disciplinary action against license number 564343, heretofore issued to CINDY LEE SPENCE.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of sanction under Article 4525, TEX. REV. CIV. STAT. ANN., SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) RESPONDENT SHALL apply to and be accepted into the TPAPN.

(2) Upon acceptance, RESPONDENT SHALL waive confidentiality and cause TPAPN to provide a copy of the executed contract to the Board of Nurse Examiners.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term.

(4) RESPONDENT SHALL CAUSE TPAPN to notify the Board of Nurse Examiners of any violation of the TPAPN contract.

IT IS FURTHER AGREED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Art. 4513 et. seq., the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 et. seq. and this Order.

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Agreed Sanctions, and any conditions of this Order to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Board of Nurse Examiners, and a copy will be mailed to me.

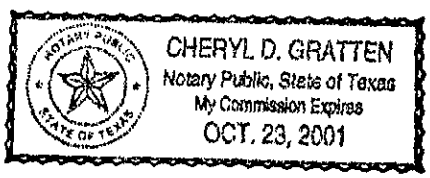
Signed this 17 day of June, 1998.

Cindy Lee Spence

CINDY LEE SPENCE, Respondent

Sworn to and subscribed before me this 17 day of June, 1998.

SEAL



Notary Public in and for the State of Texas

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby accept and enter the Agreed Order that was signed on the 17th day of June, 1998, by CINDY LEE SPENCE , license number 564343 , and said Order is final.

Entered and effective this 22nd day of June, 1998.

Katherine A. Thomas, MN, RN
Executive Director on behalf of said Board

DOCKET NO. 507-99-1072

IN THE MATTER OF	§	BEFORE THE
	§	
PERMANENT CERTIFICATE	§	
NUMBER 564343	§	
	§	BOARD OF NURSE EXAMINERS
ISSUED TO	§	
CINDY LEE SPENCE	§	
	§	FOR THE STATE OF TEXAS

ORDER OF THE BOARD

TO: CINDY LEE SPENCE
Route 4, Box 780
Marshall, Texas 75670

During open meeting at Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge 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.

NOW, THEREFORE, IT IS ORDERED that the Certificate Number 564343 previously issued to CINDY LEE SPENCE to practice professional nursing in the State of Texas is hereby REVOKED. Respondent shall comply in all respects with the

Nursing Practice Act, TEX. REV. CIV. STAT. ANN., as amended, art. 4513 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE § 211.01 *et seq.* and this Order.

IT IS FURTHER ORDERED that Permanent Certificate Number 564343, previously issued to CINDY LEE SPENCE, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

Entered this 28th day of October, 1999.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY: Katherine A. Thomas
Katherine A. Thomas, M.N., R.N.
Executive Director on behalf of said Board

DOCKET NO. 507-99-1072

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 564343 ISSUED TO	§	OF
CINDY LEE SPENCE	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Board of Nurse Examiners (the Board) brought this case seeking disciplinary action against Cindy Lee Spence (Respondent). The Staff requested that Respondent's permanent certificate be revoked. This proposal recommends a default judgment be entered against Respondent and Respondent's permanent certificate be revoked as requested by the Staff.

I. Background

On July 27, 1999, a hearing was convened before Henry D. Card, Administrative Law Judge (ALJ), at the hearings facility of the State Office of Administrative Hearings in the Stephen F. Austin Building in Austin, Texas. The Staff was represented by James W. Johnston. Respondent did not appear and was not represented at the hearing.

The details of jurisdiction and notice are set out in the Findings of Fact and Conclusions of Law.

II. Recommendation

The ALJ recommends that a default judgment be entered and that Respondent's permanent certificate be revoked based on the Findings of Fact and Conclusions of Law presented below.

III. Findings of Fact

1. Respondent, a nurse licensed by the State of Texas, holds permanent certificate number 564343.

2. The Board filed formal charges against Respondent on April 15, 1999.

3. On April 20, 1999, the Board mailed a copy of the charges to Respondent by certified mail, return receipt requested, at her address of record: Route 4, Box 780; Marshall, Texas 75670. The certified letter was returned unclaimed.

4. On June 16, 1999, the Board mailed notice of the hearing to Respondent by certified mail, return receipt requested, at her address of record. The certified letter was returned unclaimed.

5. 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.

6. The notice of hearing contained the following language in capital letters in 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 FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF SHALL BE GRANTED BY DEFAULT.

7. Respondent did not appear and was not represented at the hearing.

8. The Staff filed a motion for default judgment.

9. The formal charges, which were set forth in the notice of hearing, contained the following allegation:

CHARGE I.

Respondent failed to comply with the Agreed Order issued to her on June 22, 1998, by the Board of Nurse Examiners for the State of Texas. Non-compliance is the result of her failure to apply and be accepted into the Texas Peer Assistance Program for Nurses (TPAPN) as required by stipulation number one (1) of the Agreed Order dated June 22, 1998, which reads as follows:

> "(1) RESPONDENT shall apply to and be accepted into the TPAPN."

IV. Conclusions of Law

1. The Board has jurisdiction over this matter pursuant to TEX. REV. CIV. STAT. ANN. art. 4525 (Vernon 1999).

2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1999).

3. Proper and timely notice was effected upon Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. Ch. 2001 (Vernon1999) and 22 TEX. ADMIN. CODE (TAC) §§213.10 AND 213.22.

4. The allegation contained in the Board's formal charges is deemed admitted as true pursuant to 1 TAC §155.55.

5. Respondent's action violated TEX. REV. CIV. STAT. ANN. art. 4525(b)(1).

6. Respondent's action warrants revocation of her permanent certificate, considering the factors set out in 22 TAC §213.33.

7. Respondent's permanent certificate should be revoked pursuant to TEX. REV. CIV. STAT. ANN. art. 4525 (Vernon 1999).

SIGNED this 13th day of September, 1999.

HENRY D. CARD
Senior Administrative Law Judge
State Office of Administrative Hearings

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