

BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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In the Matter of License Number 528876 § REINSTATEMENT  
issued to GARY WAYNE BARNETT § AGREED ORDER



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 Thomas*  
Executive Director of the Board

On this day came to be considered by the Board of Nurse Examiners for the State Texas, hereinafter referred to as the Board, the Petition for Reinstatement of registered nurse license number 528876, held by GARY WAYNE BARNETT, hereinafter referred to as Petitioner.

An informal conference was held on May 29, 2001, at the office of the Board of Nurse Examiners, in accordance with Section 301.464, Texas Occupations Code.

Petitioner appeared in person. Petitioner was notified of his right to be represented by legal counsel and elected to waive representation by counsel. In attendance were Katherine A. Thomas, MN, RN, Executive Director; Phong Phan, Assistant General Counsel; Anthony L. Diggs, Director of Enforcement; and Noemi Leal, Senior Investigator.

FINDINGS OF FACT

1. Petitioner waived representation by counsel, notice and hearing, and consented to the entry of this Order.
2. Petitioner received a Baccalaureate Degree in Nursing from MacMurray College, Jacksonville, Illinois, in 1985. Petitioner was originally licensed to practice professional nursing in the state of Texas on January 2, 1986.
3. Petitioner's professional employment history included:

1979 - 1985	Child Care Supervisor Illinois School for the Visually Impaired Jacksonville, Illinois
1985 - 1986	Staff Nurse/Emergency Room-Triage Huntsville Memorial Hospital Huntsville, Texas

Petitioner's professional employment continued:

1986 - 1998	Staff Nurse/Emergency Room-Triage Veteran's Affairs Medical Center Houston, Texas
05/1998 - 09/1998	Staff Nurse/Emergency Room-Triage Park Plaza Hospital Houston, Texas
1999 - Present	Medical Transcriptionist Medquist, Inc. Marlton, New Jersey

4. The Board accepted the voluntary surrender of Petitioner's license to practice professional nursing on June 16, 1999. A copy of the Order accepting the surrender of Petitioner's license is attached and incorporated by reference as a part of this Order.
5. On or about April 9, 2001, Petitioner submitted a Petition for Reinstatement of license to practice professional nursing in the State of Texas.
6. Petitioner presented the following in support of his petition:
  - 6.1. Letter dated April 6, 2001, submitted by Edward L. Reilly, M.D, from The University of Texas, Houston Health Science Center, Department of Psychiatry, Houston, Texas. Dr. Reilly first saw Petitioner on March 28, 2000, when Petitioner was on Prozac 20mg a day prescribed by Petitioner's primary care physician. Dr. Reilly increased the Prozac to 40mg a day when Petitioner continued to experience symptoms of depression. Dr. Reilly stated that Petitioner had done well since the change of medication and currently attends two(2) twelve-step meetings per week.
  - 6.2. Letter of support dated March 1, 2001, submitted by Andrea P. Baldwin-Benjamin, RN, ADN, Houston, Texas. Ms. Baldwin-Benjamin has known and worked with Petitioner for more than twelve (12) years. She states that Petitioner is one of the finest, compassionate, and competent nurses in Texas.
  - 6.3. Letter of recommendation dated February 15, 2001, submitted by David Mark Menotti, RN, MPH, Galveston, Texas. Mr. Menotti worked with Petitioner and considered him to be a caring, skilled, and compassionate nurse.
  - 6.4. Letter of recommendation dated April 2, 2001, submitted by Michael Mistic, RN, MNCS, FNP-C, Department of Veterans Affairs, Houston, Texas. Mr. Mistic has known Petitioner for fifteen (15) years and states that Petitioner always maintained high clinical skills.

- 6.5. Letter of support dated February 18, 2001, submitted by Gregory A. Smith, Houston, Texas. Mr. Smith has known Petitioner for approximately five (5) years.
- 6.6. Letter of support dated February 25, 2001, submitted by Karen A. Stonecypher, RN, BSN, Houston, Texas. Ms. Stonecypher has known Petitioner since 1995 as a colleague and friend. Ms. Stonecypher states Petitioner has been clean and sober for almost two (2) years.
- 6.7. Letter of support submitted by Richard Vickrey, Houston, Texas. Mr. Vickrey has known Petitioner since 1991 and they attend support group meetings together.
- 6.8. Verification of attendance at support group meetings from July 1999 through March 2001.
- 6.9. Verification of successful completion of sixty (60) hours of Type 1, Continuing Education Units as required by the Board.

#### CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
3. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

#### ORDER

IT IS THEREFORE AGREED, subject to ratification by the Board of Nurse Examiners, that the petition of GARY WAYNE BARNETT, license number 528876, to practice professional nursing in the state of Texas, be and the same is hereby GRANTED SUBJECT TO THE FOLLOWING CONDITIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, 301.001 *et seq.*, the Rules and Regulations Relating

to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 et. seq. and the stipulations contained in this Order:

(1) PETITIONER SHALL NOT seek employment or practice nursing for compensation until he has paid all required re-registration fees and obtained a LIMITED LICENSE to practice professional nursing from the Board with the appropriate notation.

(2) While under the terms of this Order, PETITIONER SHALL NOT provide direct patient care. For the purposes of this Order, direct patient care involves a personal relationship between the RN and the client, and includes, but is not limited to: teaching; counseling; assessing the client's needs and strengths; and providing skilled nursing care.

(3) Should PETITIONER desire to return to the practice of professional nursing in the State of Texas providing direct patient care, PETITIONER SHALL petition the Board for such approval and Respondent's petition shall be evaluated pursuant to criteria outlined in 22 TEX. ADMIN. CODE §213.26.

(4) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in nursing jurisprudence. PETITIONER SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience must include registered nurses. It must be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, and documentation of care. Courses focusing on malpractice issues will not be accepted. PETITIONER 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 PETITIONER's successful completion of the course. This course is to be taken in addition to any continuing

education requirements the Board may have for relicensure.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license to practice professional nursing in the State of Texas.

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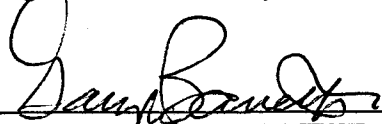
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PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I waive representation by counsel. I certify that my past behavior, except as disclosed in my Petitioner for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

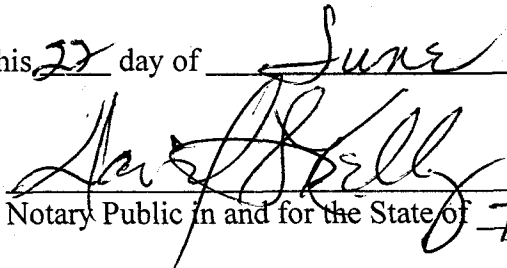
I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice professional nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including revocation of my license to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

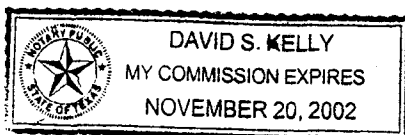
Signed this 22 day of June, 2001.

  
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GARY WAYNE BARNETT, Petitioner

Sworn to and subscribed before me this 22 day of June, 2001.

SEAL

  
\_\_\_\_\_  
Notary Public in and for the State of TEXAS



WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 22nd day of June, 2001, by GARY WAYNE BARNETT, license number 528876, and said Order is final.

Effective this 19th day of July, 2001.



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

BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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In the Matter of License Number 528876 § AGREED  
issued to GARY WAYNE BARNETT § ORDER

On this day, the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, accepted the voluntary surrender of License Number 528876, issued to GARY WAYNE BARNETT, hereinafter referred to as Respondent. This action was taken in accordance with Article 4525.1(c), Revised Civil Statutes of Texas, as amended.

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

The Board makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was provided to 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, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received a Baccalaureate Degree in Nursing from MacMurray College, Jacksonville, Illinois on May 19, 1985. Respondent was licensed to practice professional nursing in the State of Texas on January 2, 1986.
5. Respondent's professional employment history is unknown.



6. Respondent, while employed with Veterans Affairs Hospital, Houston, Texas, during December 1997, misappropriated Demerol belonging to the facility and the patients thereof. Respondent's conduct defrauded the facility and the patients of the cost of the medication.
7. Respondent, while employed with the aforementioned facility during December 1997, engaged in the intemperate use of Demerol. Possession of Demerol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Demerol 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 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.
8. Respondent, while employed with Tenet Park Plaza Hospital, Houston, Texas, on or about July 30, 1998, misappropriated Demerol belonging to the facility and the patients thereof. Respondent's conduct defrauded the facility and the patients of the cost of the medication.
9. Respondent, while employed with Tenet Park Plaza Hospital, Houston, Texas, on or about July 30, 1998, engaged in the intemperate use of Demerol. Possession of Demerol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Demerol 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 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.
10. Respondent, while employed with ENSS, Houston, Texas and working at Cypress Fairbanks Medical Center, Houston, Texas, on or about February 1, 1998, misappropriated Demerol belonging to Cypress Fairbanks Medical Center and the patients thereof. Respondent's conduct defrauded the facility and the patients of the cost of the medication.
11. Respondent, while employed with ENSS, Houston, Texas and working at Cypress Fairbanks Medical Center, Houston, Texas, on or about February 1, 1998, engaged in the intemperate use of Demerol. Possession of Demerol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Demerol 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 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.
12. Respondent, while employed with North Houston Medical Center, Houston, Texas, on or about April 8, 1999, misappropriated Demerol belonging to the facility and the patients thereof. Respondent's conduct defrauded the facility and the patients of the cost of the medication.

13. Respondent, while employed with North Houston Medical Center, Houston, Texas, on or about April 8, 1999, engaged in the intemperate use of Demerol. Possession of Demerol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Demerol 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 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.
14. Respondent returned License Number 528876 and submitted a statement to the Board voluntarily surrendering the right to practice professional nursing in Texas.
15. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.
16. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

#### CONCLUSIONS OF LAW

1. Pursuant to Article 4525, Revised Civil Statutes of Texas, as amended, 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)(8) & (9), TEX. REV. CIV. STAT. ANN., and 22 TEX. ADMIN. CODE §217.13(1) & (15).
4. The evidence received is sufficient cause pursuant to Article 4525(b), TEX. REV. CIV. STAT. ANN., to take disciplinary action against License Number 528876, heretofore issued to GARY WAYNE BARNETT, including revocation of Respondent's professional license to practice nursing in the State of Texas.
5. Under Article 4525.1(c), Revised Civil Statutes of Texas, as amended, the Board has the authority to accept the voluntary surrender of a license.
6. Under Article 4525.1(d), Revised Civil Statutes of Texas, as amended, the Board may impose conditions for reinstatement of licensure.

7. Any subsequent reinstatement of this license will be controlled by Article 4525(a) and (b), TEX. REV. CIV. STAT. ANN., and 22 TAC 213.26-29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the voluntary surrender of License Number 528876, heretofore issued to GARY WAYNE BARNETT, to practice professional nursing in the State of Texas, is accepted by the Board of Nurse Examiners. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice professional nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying himself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until one (1) year has elapsed from the date of this Order, and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.
3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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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, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes final when accepted by the Executive Director at which time the terms of this Order become effective and a copy will be mailed to me.

Signed this 10<sup>th</sup> day of June, 19 99

Gary W. Barnett  
GARY WAYNE BARNETT, Respondent

Sworn to and subscribed before me this 10 day of June, 19 99

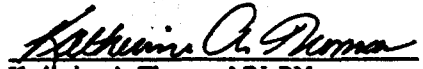
SEAL

Janita Engbert  
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 the voluntary surrender of License Number 528876, previously issued to GARY WAYNE BARNETT.

Effective this 16th day of June, 1999.

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