

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.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 709644 §
issued to MICHAEL ALLEN AFFLERBACH § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the B considered the matter of MICHAEL ALLEN AFFLERBACH, Registered Nurse License Number 709644, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on June 11, 2010, 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(s).
2. Respondent waived representation by counsel, informal proceedings, 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 an Associate Degree in Nursing from Tarrant County Junior College, Fort Worth, Texas, on May 14, 2004. Respondent was licensed to practice professional nursing in the State of Texas on September 7, 2004.
5. Respondent's complete professional nursing employment history includes:

09/04-03/08 RN Harris Methodist Northwest
Azle, Texas

03/08-07/08 Unknown

Respondent's professional nursing history continued:

07/08-04/09	RN	Lakeworth Nursing Home Fort Worth, Texas
04/09-Present	Unknown	

6. At the time of the incident in Finding of Fact Numbers Seven (7) through Ten (10), Respondent was employed as a Registered Nurse with Harris Methodist Northwest, Azle, Texas, and had been in this position for approximately three (3) years and six (6) months.
7. On or about March 10, 2008, while employed as a Registered Nurse with Harris Methodist Northwest, Azle, Texas, Respondent withdrew Vicodin from the Medication Dispensing System for patients in excess frequency/dosage of the physicians' order. Respondent's conduct was likely to injure the patient in that the administration of Vicodin in excess frequency and/or dosage of the physician's order could result in the patient suffering from adverse reactions.
8. On or about March 10, 2008, while employed as a Registered Nurse with Harris Methodist Northwest, Azle, Texas, Respondent withdrew Vicodin from the Medication Dispensing System for patients, but failed to document, or accurately document the administration of the medications in the patients' Medication Administration Records and/or nurse's notes. Respondent's conduct was likely to injure the patients in that subsequent care givers would rely on his documentation to further medicate the patient which could result in an overdose.
9. On or about March 10, 2008, while employed as a Registered Nurse with Harris Methodist Northwest, Azle, Texas, Respondent withdrew Vicodin from the Medication Dispensing System for patients, but failed to follow the facility's policy and procedures for wastage of any of the unused portions of the medications. Respondent's conduct was likely to deceive the hospital pharmacy and placed them in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
10. On or about March 10, 2008, while employed as a Registered Nurse with Harris Methodist Northwest, Azle, Texas, Respondent misappropriated Vicodin from the facility and patients thereof, or failed to take precautions to prevent such misappropriation. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
11. At the time of the incident in Findings of Fact Numbers Twelve (12) through Fourteen (14), Respondent was employed as a Registered Nurse with Lake Worth Nursing Home, Fort Worth, Texas, and had been in this position for approximately seven (7) months.

12. On or about February 5, 2009, while employed as a Registered Nurse with Lake Worth Nursing Home, Fort Worth, Texas, Respondent lacked fitness to practice nursing in that he admitted to a relapse on alcohol and Baclofen. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
13. On or about February 5, 2009, while employed as a Registered Nurse with Lake Worth Nursing Home, Fort Worth, Texas, Respondent engaged in the intemperate use of alcohol in that he admitted to a relapse. The use of alcohol 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. On or about February 5, 2009, while employed as a Registered Nurse with Lake Worth Nursing Home, Fort Worth, Texas, Respondent engaged in the intemperate use of Baclofen in that he admitted to a relapse on Baclofen. Possession of Baclofen is prohibited by Chapter 483 of the Texas Health and Safety Code (Dangerous Drug Act). The use of Baclofen 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.
15. On or about February 5, 2009, while employed as a Registered Nurse with Lake Worth Nursing Home, Fort Worth, Texas, Respondent misappropriated Baclofen from the facility and patients thereof, or failed to take precautions to prevent such misappropriation. Respondent's conduct defrauded the facility and the patients thereof of the cost of the medication.

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16. In Response to Findings of Fact Numbers Seven (7) through Ten (10) and Twelve (12) through Fourteen (14), Respondent states that the accusations of his conduct are true. Respondent reports that he took a couple of his wife's Vicodin from home around November of 2007, which was around the same time he started taking Vicodin from the Harris Methodist Northwest Hospital and Harris Methodist Fort Worth. Upon his termination, Respondent states he admitted himself to one month of inpatient rehabilitation at Grapevine Valley Hope and Texas Peer Assistance Program for Nurses (TPAPN). Respondent reports that he stayed sober for a little over three months, and subsequently relapsed by drinking alcohol and taking Sudafed. Additionally, Respondent states sometime around October 2008, he misappropriated a couple of Baclofen from Lake Worth Nursing Home and started having to ingest more to get the same result. Respondent reports that he finished six weeks of intensive outpatient therapy and is currently working with his fellowship at his church for support as well as attending couples and individual therapy.
17. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
18. 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.
19. Respondent's conduct described in Findings of Fact Numbers Seven (7) through Ten (10) and Twelve (12) through Fifteen (15), resulted from Respondent's dependency on chemicals.
20. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, 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 Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code, 22 TEX. ADMIN. CODE §217.11(1)(A)&(D) and §217.12(1)(A),(B)&(C),(4),(5),(6)(A),(G)&(H),(10)(A)&(B) and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 709644, heretofore issued to MICHAEL ALLEN AFFLERBACH, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, 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, within forty-five (45) days following the date of entry of this final Order, apply to TPAPN and SHALL, within ninety (90) days following the date of entry of this final Order, sign and execute the TPAPN participation agreement, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars (\$500.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term and SHALL keep his license(s) to practice nursing in the State of Texas current.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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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. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and 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 Texas Board of Nursing, and a copy will be mailed to me. 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 nursing in the State of Texas, as a consequence of my noncompliance.

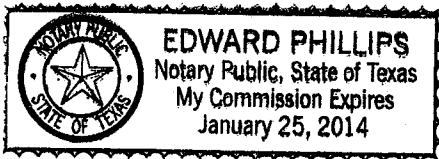
Signed this 6th day of July, ~~2009~~^{error - mmt} 2010

Mike Allen Affuerbach
MICHAEL ALLEN AFFUERBACH, Respondent

Sworn to and subscribed before me this 6 day of July, 2010.

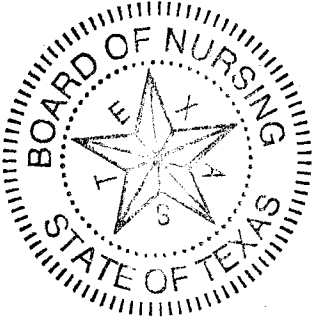
SEAL

Edward Phillips
Notary Public in and for the State of Texas



WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 6th day of July, 2010, by MICHAEL ALLEN AFFLERBACH, Registered Nurse License Number 709644, and said Order is final.

Entered and effective this 8th day of July, 2010.



A handwritten signature in cursive script, appearing to read 'Katherine A. Thomas', is written over a horizontal line.

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