

IN THE MATTER OF

PERMANENT REGISTERED NURSE
LICENSE NUMBER 613257
ISSUED TO

KIMBERLY MICHELE MARSH

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§
§
§

BEFORE THE TEXAS

BOARD OF NURSING

ELIGIBILITY AND

DISCIPLINARY COMMITTEE



Patricia P. Plummer
Executive Director of the Board

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.

ORDER OF THE BOARD

TO: Kimberly Michele Marsh
3434 Buckhaven
San Antonio, TX 78230

During open meeting held in Austin, Texas, on **November 12, 2013**, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

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 Permanent Registered Nurse License Number 613257, previously issued to KIMBERLY MICHELE MARSH, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this 12th day of November, 2013.

TEXAS BOARD OF NURSING



BY:

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed June 26, 2013.

Re: Permanent Registered Nurse License Number 613257
Issued to KIMBERLY MICHELE MARSH
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 20____, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested

Kimberly Michele Marsh
3434 Buckhaven
San Antonio, TX 78230

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of § **BEFORE THE TEXAS**
Permanent Registered Nurse §
License Number 613257 §
Issued to KIMBERLY MICHELE MARSH, §
Respondent § **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KIMBERLY MICHELE MARSH, is a Registered Nurse holding License Number 613257, which is in delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about March 15, 2013, Respondent failed to comply with the Agreed Order issued to her by the Texas Board of Nursing on September 28, 2012. Noncompliance is the result of Respondent's failure to sign and execute the Texas Peer Assistance Program for Nurses (TPAPN) participation agreement. Stipulation number one (1) of the Agreed Order dated September 28, 2012, states:

"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."

On or about March 15, 2013, Respondent was dismissed from TPAPN, and her case was referred to the Board. A copy of the Findings of Fact, Conclusions of Law, and Order dated September 28, 2012, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(9)&(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and the Board's rules, 22 Tex. Admin. Code §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

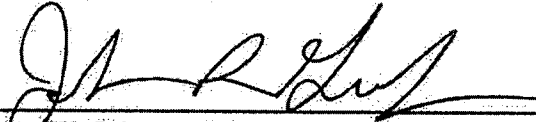
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.texas.gov/disciplinaryaction/discp-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order dated September 28, 2012.

Filed this 26 day of June, 2013

TEXAS BOARD OF NURSING



James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

Jena Abel, Assistant General Counsel
State Bar No. 24036103

Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924

John R. Griffith, Assistant General Counsel
State Bar No. 24079751

Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847

Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269

John F. Legris, Assistant General Counsel
State Bar No. 00785533

TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6811
F: (512) 305-8101 or (512)305-7401

Attachments: Order of the Board dated September 28, 2012
D/2012.06.19



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 § AGREED
Registered Nurse License Number 613257 §
issued to KIMBERLY MICHELE MARSH § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of KIMBERLY MICHELE MARSH, Registered Nurse License Number 613257, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(9),(10),(12)&(13) and 301.453, Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on July 20, 2012, by Katherine A. Thomas, MN, RN, FAAN, 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 informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent holds a license to practice professional nursing in the State of Texas which is delinquent status.
4. Respondent received a Baccalaureate Degree in Nursing from The University of Texas, Health Science Center, San Antonio, Texas, on February 1, 1995. Respondent was licensed to practice professional nursing in the State of Texas on February 7, 1995.
5. Respondent's professional nursing employment history includes:
2/1995 - 8/2000 Unknown

Respondent's professional nursing employment history continued:

9/2000 - 10/2005	RN	University of Texas Health Science Center. San Antonio, Texas
10/2005 - 1/2007	RN	Trisun Healthcare San Antonio, Texas
2/2007 - 7/2007	RN	Christus Santa Rosa - Children's Hospital San Antonio, Texas
7/2007 - 2/2008	RN	Manor Care - Briaridge San Antonio, Texas
3/2008	Unknown	
4/2008 - 9/2008	RN	Texas Specialty Hospital of San Antonio San Antonio, Texas
10/2008 - 1/2009	RN	Lifecare Hospital of San Antonio San Antonio, Texas
2/2009 - 6/2009	Unknown	
7/2009 - 4/2010	RN	Methodist Metropolitan Hospital San Antonio, Texas
5/2010 - 6/2010	Unknown	
7/2010 - 10/2010	RN	Morningside Ministries San Antonio, Texas
10/2010 - 12/2010	RN	Cibolo Creek Boerne, Texas
1/2011 - Present	Unknown	

6. On or about June 30, 2009, Respondent plead nolo contendere to the offense of "Driving While Intoxicated - Open Can," a Class B Misdemeanor (committed on August 5, 2007) in the County Court at Law Number 4 of Bexar County, Texas, under Cause Number 224844. Respondent was sentenced to six (6) months confinement in the Bexar County Jail. The imposition of the confinement was suspended and Respondent was placed on probation for a period of six (6) months, and ordered to pay a fine and court costs.

7. At the time of the incidents in Findings of Fact Numbers Eight (8) and Nine (9), Respondent was employed as a Registered Nurse with Cibolo Creek, Boerne, Texas, and had been in this position for two (2) months.
8. On or about December 27, 2010, while employed with Cibolo Creek, Boerne, Texas, Respondent lacked fitness to practice professional nursing in that, while on duty, she was observed exhibiting confusion, delayed responses to questions and comments, difficulty completing sentences, speaking off subject, falling asleep while speaking, standing and while trying to pass medications, attempting to pass medications from the wrong medication cart, she was reminded to administer a resident's medications multiple times, and she required guidance to care for a patient that was in respiratory distress. Respondent's conduct could have affected her ability to recognize subtle signs, symptoms or changes in the patient's condition, and could have affected her 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 December 27, 2010, while employed with Cibolo Creek, Boerne, Texas, Respondent engaged in the intemperate use of Benzodiazepines, Methadone and Methamphetamines in that she submitted a specimen for a drug screen which resulted positive for Benzodiazepines, Methadone and Methamphetamines. Possession of Benzodiazepines, Methadone and Methamphetamines is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Benzodiazepines, Methadone and Methamphetamines 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. On or about February 10, 2012, Respondent plead guilty to the offense of "Driving While Intoxicated 2nd," a Class A Misdemeanor (committed on November 5, 2011) in the County Court at Law Number 4 of Bexar County, Texas, under cause number 376585. Respondent was sentenced to three (3) months and ten (10) days confinement in the Bexar County Jail and ordered to pay a fine and court costs.
11. In response to Findings of Fact Numbers Six (6) through Ten (10), Respondent states, "I am writing today to request voluntary admission into the TPAPN program. I have voluntarily stepped back from practice to re-evaluate my life and to mend. Nursing has been my passion and profession for almost 18 years. After having been away a year and reflecting on my passion to continue in this field, I feel that not only will I be successful in completing the program but successful in continuing my career as a nurse."
12. The Respondent's conduct as described in the preceding Finding(s) of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.

13. 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.
14. Respondent's conduct as described in the preceding Finding(s) of Fact resulted from or was significantly influenced by Respondent's substance use disorder.
15. 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 violation(s) of 22 TEX. ADMIN. CODE §217.11 (1)(B)&(1)(T) and TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(4),(5),(10)(A),(10)(D)&(13).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 613257, heretofore issued to KIMBERLY MICHELE MARSH, 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 all applicable 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(s) is/are 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(s) 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.

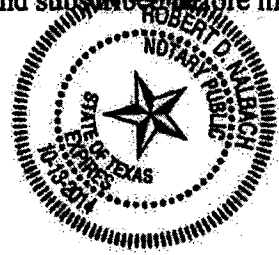
I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and 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(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 18th day of Sept, 2012.

Kimberly Michele Marsh
KIMBERLY MICHELE MARSH, RESPONDENT

Sworn to and subscribed before me this 18th day of September, 2012.

SEAL



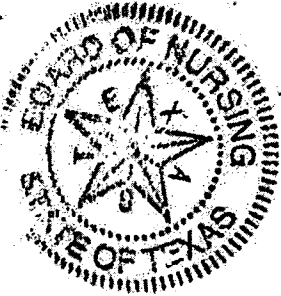
Robert D. Malbach
Notary Public in and for the State of TEXAS

Approved as to form and substance.

Paul Anderson
PAUL ANDERSON, Attorney for Respondent

Signed this 18 day of SEPTEMBER, 2012.

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 18th day of September, 2012, by KIMBERLY MICHELE MARSH, Registered Nurse License Number 613257, and said Order is final.



Entered and effective this 28th day of September, 2012.

Katherine A. Thomas

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