

IN THE MATTER OF  
PERMANENT REGISTERED NURSE  
LICENSE NUMBER 775106  
ISSUED TO  
DIANA ELENA TURNER

§  
§  
§  
§  
§

BEFORE THE TEXAS  
BOARD OF NURSING  
  
ELIGIBILITY AND  
DISCIPLINARY COMMITTEE



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 R. Plummer*  
Executive Director of the Board

**ORDER OF THE BOARD**

TO: DIANA ELENA TURNER  
201 S. BEECH STREET  
SPIRO, OK 74959

During open meeting held in Austin, Texas, on May 13, 2014, 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

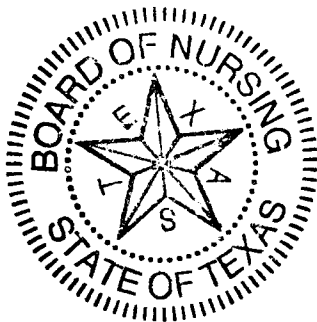
will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

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 775106, previously issued to DIANA ELENA TURNER, 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 13th day of May, 2014.



TEXAS BOARD OF NURSING

BY:

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

Attachment: Formal Charge filed 12/10/2013.

I certify this to be a true copy  
of the records on file with the  
Texas Board of Nursing

Date: 5/14/14  
Signed: [Signature]

Re: , Permanent Registered Nurse License Number 775106  
& Permanent Vocational Nurse License Number 0  
Issued to DIANA ELENA TURNER  
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of May, 2014, 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  
DIANA ELENA TURNER  
201 S. BEECH STREET  
SPIRO, OK 74959

Via USPS First Class Mail

BY:



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

In the Matter of Permanent § BEFORE THE TEXAS  
Registered Nurse License §  
Number 775106 Issued to §  
DIANA ELENA TURNER, §  
Respondent § BOARD OF NURSING

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DIANA ELENA TURNER, is a Registered Nurse holding License Number 775106, 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 28, 2013, Respondent was issued an Order by the Oklahoma Board of Nursing wherein Respondent's license to practice professional nursing in the State of Oklahoma was Reprimanded with requirements to submit to an evaluation. Subsequently, on or about September 26, 2013, Respondent was issued a Supplemental Order by the Oklahoma Board of Nursing wherein Respondent's license to practice professional nursing in the State of Oklahoma was Suspended pending acceptance into the Oklahoma Peer Assistance Program. Copies of the Order issued by the Oklahoma Board of Nursing, dated March 28, 2013, and Supplemental Order issued by the Oklahoma Board of Nursing, September 26, 2013, are 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)(8), Texas Occupations Code.

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](http://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](http://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 are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order issued by the Oklahoma Board of Nursing, dated March 28, 2013, and Supplemental Order issued by the Oklahoma Board of Nursing, September 26, 2013.

Filed this 10<sup>th</sup> day of December, 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 R. Brenton, Assistant General Counsel  
State Bar No. 24066924  
John R. Griffith, Assistant General Counsel  
State Bar No. 24079751  
R. Kyle Hensley, Assistant General Counsel  
State Bar No. 50511847  
John F. Legris, Assistant General Counsel  
State Bar No. 00785533  
John Vanderford, Assistant General Counsel  
State Bar No. 24086670

333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701  
P: (512) 305-6811  
F: (512) 305.8101

Attachments: Order issued by the Oklahoma Board of Nursing, dated March 28, 2013, and Supplemental Order issued by the Oklahoma Board of Nursing, September 26, 2013.

D/2012.06.19

BEFORE THE OKLAHOMA BOARD OF NURSING

IN THE MATTER OF DIANA ELENA MOJICA TURNER, R.N.  
LICENSE NO. R0100299

ORDER

This matter comes on for hearing before the Oklahoma Board of Nursing ("Board") on the 28th day of March, 2013, at the Wyndham Garden Hotel Conference Center, 2101 South Meridian Avenue, Oklahoma City, Oklahoma.

The Board is represented by Debbie McKinney, Attorney at Law. Diana Elena Mojica Turner, R.N. ("Respondent"), appears in person without counsel, at the hearing on this date.

The Board, after reviewing the pleadings, hearing and considering all of the evidence and being fully advised, finds by clear and convincing evidence and enters the following Findings of Fact, Conclusions of Law and Order.

This Order is issued pursuant to the Oklahoma Nursing Practice Act, 59 O.S. §§ 567.1 *et. seq.*

FINDINGS OF FACT

After hearing all the evidence presented and upon due consideration thereof, the Board by clear and convincing evidence finds:

1. Proper notice of this hearing has been served on Respondent as required by law.
2. Respondent is licensed to practice registered nursing in the State of Oklahoma and is the holder of License No. R0100299, issued by the Oklahoma Board of Nursing.
3. On January 9, 2013, Lisa Griffitts, R.N., Nurse Investigator of the Oklahoma Board of Nursing, filed a Complaint against Respondent's license, alleging facts that constitute

violations of the Oklahoma Nursing Practice Act. The Complaint is hereby incorporated by reference as if set forth in full herein.

4. On January 28, 2013, the Board received Respondent's Notice of Appearance and Response. The Notice of Appearance and Response are hereby incorporated by reference as if set forth in full herein.

5. Evidence presented at the hearing included that on or about April 3, 2011, in Sebastian County, Arkansas, Case No. 11-0005646, the Respondent was arrested and charged with Driving While Intoxicated (1<sup>st</sup> offense), a misdemeanor. On or about May 11, 2011, the Respondent entered a plea of guilty and was sentenced to alcohol abuse treatment, 24 hours jail-suspended, community service, defensive driving course and payment of fees, fines and costs. (State's Exhibit "A" to the Complaint.)

6. Evidence presented at the hearing included that on or about January 14, 2012, in Sebastian County, Arkansas, Case. No. 5000174, the Respondent was arrested and charged with Driving While Intoxicated (2nd offense), a misdemeanor. On or about March 13, 2012, the Respondent entered a plea of no contest and was sentenced to alcohol abuse treatment, seven days in jail, and payment of fees, fines and costs. (State's Exhibit "B" to the Complaint.)

7. Evidence presented at the hearing included that the Respondent could not state a date from which she achieved sobriety and abstained from drinking alcohol; however, Respondent stated she last drank alcohol after her investigative conference with a Nurse Investigator. The Respondent's investigative conference with a Nurse Investigator was November 13, 2012. (Testimony of Lisa Griffitts, R.N.; Testimony of Respondent.)

8. Evidence presented at the hearing included that as a result of the first DUI, Respondent had a court-ordered locking device on her car that required her to breathe into the device, which would then allow her to start the car and drive only if the device registered that she had no alcohol on her breath. The device was installed on Respondent's car for six months. Less than two months after the device was removed, Respondent got her second DUI. As a result of that DUI, Respondent again had a court-ordered locking device installed on her car. (Testimony of Respondent.)

9. Evidence presented at the hearing included that the Respondent has never attended any Alcoholics Anonymous meetings. The Respondent has attended minimal counseling, for approximately two (2) months, after her divorce in the summer of 2012. (Testimony of Respondent.)

10. Respondent admitted that it was unprofessional conduct to be convicted of Driving Under the Influence of alcohol. (Testimony of Respondent.)

11. The Board finds there was clear and convincing evidence presented at the hearing on this date to support the allegations against the Respondent at the hearing on this date.

#### CONCLUSIONS OF LAW

The Board has jurisdiction to hear this matter pursuant to 59 O.S. §§ 567.1, *et seq.* and OAC §§ 485:10-11-1, *et seq.*, of the Rules promulgated by this Board.

This Order constitutes formal disciplinary action.

The Board concludes Respondent is guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of any licensee, or any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude,



whether or not sentence is imposed, or any conduct resulting in the revocation of a deferred or suspended sentence or probation imposed pursuant to such conviction, which is a violation of 59 O.S. §567.8 B.2., and is guilty of unprofessional conduct as defined in the Rules of the Board; specifically, OAC §§485:10-11-1.(b)(3)(H), which is a violation of 59 O.S. §567.8 B.7.

The Board finds that this conduct is grounds to deny, revoke, suspend, or discipline Respondent's license and to recover the costs of investigation and prosecution, as provided in 59 O.S. §§567.8. A.1. and 3., and L. and M.

#### **ORDER**

IT IS THEREFORE ORDERED by the Oklahoma Board of Nursing that Respondent's license to practice registered nursing in the State of Oklahoma remain in effect, and that Respondent is disciplined as follows:

1. Respondent shall, within ninety (90) days from the receipt of this Order, successfully complete a course on Nursing Jurisprudence. Respondent shall obtain Board approval of the course prior to enrollment. Home study courses, Internet and video programs will not be approved. In order for the course to be approved, the target audience must include licensed nurses. It must be a minimum of four (4) contact hours in length. The course must include an examination of the scope of nursing practice from the Oklahoma Nursing Practice Act and Rules of the Board, other laws, policies, and accreditation guidelines that govern the practice of nursing, the role of delegation and supervision, and an exploration of the ethical basis of nursing practice. Courses focusing on malpractice issues will not be accepted. The course description must indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. Respondent shall cause the sponsoring institution to submit verification of

Respondent's successful completion of the course to the Board office.

2. Respondent shall, within ninety (90) days from the receipt of this Order, submit documentation of an Evaluation, which complies with this Board's Evaluation Criteria, a copy of which is attached hereto and made a part of this Order.

- a. Respondent shall provide written documentation to Board staff confirming name of Evaluator and the date and time of the appointment. The written documentation shall be received in the Board office within fourteen (14) days of receipt of the Order.
- b. Respondent shall provide a copy of this Order and the Board's Evaluation Criteria to an Evaluator approved by the Board and shall sign consents to disclose information between the Oklahoma Board of Nursing and the approved Board Evaluator.
- c. Evaluator shall discuss findings and recommendations with Respondent and shall submit the Evaluation on letterhead directly to the Oklahoma Board of Nursing to include a summary of all assessments completed with tools utilized, diagnosis, prognosis, summary/recommendations and course of treatment if initiated.

IT IS FURTHER ORDERED the Evaluation will be reviewed by the Board for such further Orders regarding Respondent's license as may be deemed necessary and proper.

IT IS FURTHER ORDERED, that Respondent shall comply in all respects with the Nursing Practice Act, 59 O.S. Sections 567.1, *et seq.*, the Rules, OAC Title 485 Chapters 1 and 10 and Guidelines relating to nursing education, licensure and practice and this Order.

IT IS FURTHER ORDERED that within sixty (60) days from receipt of this Order, Respondent shall pay the recovery cost of the investigation and prosecution of the disciplinary action payable to the Oklahoma Board of Nursing in the amount of \$731.13. The recovery cost of the investigation and prosecution shall be paid only by certified check, money order or cash.

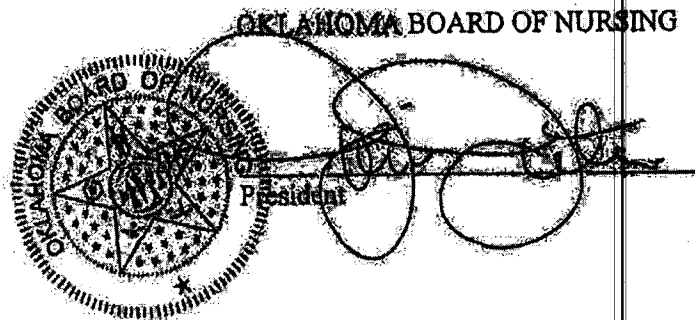
IT IS FURTHER ORDERED that the license to practice registered nursing held by Respondent is hereby reprimanded.

IT IS FURTHER ORDERED, that in the event the Certified Mail delivery of Respondent's Order is unsuccessful a process server will be hired to obtain service of the Order. If it is thus necessary to serve the Respondent by a process server, the Respondent shall reimburse the Board for the actual cost of the process server. The Respondent shall pay to the Board the actual cost of the process service within sixty (60) days of service of the process-served Order. The process service fee shall be paid only by certified check, money order or cash to the Board.

IT IS FURTHER ORDERED that any failure to comply with submission of the recovery cost of the investigation and prosecution, reimbursement of cost of service by process server, or submission of written documentation by the due date, including but not limited to proof of successful completion of educational courses, will result in a three (3) month suspension of license. At the completion of the three-month suspension, any application for reinstatement may be submitted for processing by Board Staff for approval in accordance to the agency approval process or for referral to the Board. The terms of the previous Order will be extended for three (3) months, as applicable. An administrative penalty of \$500 for each violation of Respondent's Board Order shall be paid by certified check, money order, or cash prior to reinstatement, pursuant to statute, 59 O.S. §567.8. A.2 J.1. & 2, and §485:10-11-2(d) of the Rules promulgated by the Board.

IT IS FURTHER ORDERED that any failure to comply with submission of documentation by third parties, including late reports, unsatisfactory reports, or other violations of the Oklahoma Nursing Practice Act by the Respondent, will require Respondent's appearance before the Board to show cause why Respondent's license should not be revoked or other such action taken as the Board deems necessary and proper.

IT IS FURTHER ORDERED that this Order constitutes disciplinary action by the Board and may be used in any subsequent hearings by the Board. In the event other misconduct is reported to the Board, this Order may be used as evidence against Respondent to establish a pattern of behavior and for the purpose of proving additional acts of misconduct.



SW:ad

**BEFORE THE OKLAHOMA BOARD OF NURSING**

IN THE MATTER OF DIANA ELENA MOJICA TURNER, R.N.,  
LICENSE NO. R0100299

**SUPPLEMENTAL ORDER**

This matter comes on for review of Evaluation before the Oklahoma Board of Nursing ("Board") on the 26th day of September, 2013, at the Fairfield Inn & Suites, 4521 S.W. 15th St., Oklahoma City, Oklahoma.)

The Board is represented by Debbie McKinney, Attorney at Law. Diana Elena Mojica Turner, R.N. ("Respondent"), appears neither in person nor by counsel at the hearing on this date.

The Board, after reviewing the pleadings, hearing and considering all of the evidence and being fully advised, finds by clear and convincing evidence and enters the following Findings of Fact, Conclusions of Law and Order.

This Order is issued pursuant to the Oklahoma Nursing Practice Act, 59 O.S. §§ 567.1 *et. seq.*

**FINDINGS OF FACT**

After hearing all the evidence presented and upon due consideration thereof, the Board by clear and convincing evidence finds:

1. Proper notice of this proceeding for review of Evaluation has been served on Respondent as required by law.
2. Respondent is licensed to practice registered nursing in the State of Oklahoma and is the holder of License No. R0100299 issued by the Oklahoma Board of Nursing.

3. On March 28, 2013, Respondent was issued an Order requiring Respondent to submit documentation of an Evaluation that complies with this Board's Evaluation Criteria, for review by the Board for the purpose of determining if further Orders are necessary and proper. Said Order is hereby incorporated by reference as if set forth in full herein.

4. On July 1, 2013, Respondent's Evaluation was received in the Board office.

5. On August 8, 2013, Respondent was sent Notice that the Evaluation would be reviewed by the Board on September 26, 2013. The Notice of Evaluation is incorporated by reference as if set forth in full herein.

6. On August 23, 2013, the Oklahoma Board of Nursing received Respondent's Notice of Appearance indicating that Respondent would appear at the hearing on September 26, 2013. The Notice of Appearance is hereby incorporated by reference as if set forth in full herein.

7. Respondent failed to answer the docket call for the Oklahoma Board of Nursing discipline hearings on the date and time specified in the Notice of Hearing properly served on Respondent. Respondent is in default for her failure to appear as specified in the Notice of Hearing.

8. On September 26, 2013, the Evaluation was reviewed and accepted by the full Board. The Board recommends that Respondent be referred to the Peer Assistance Program of the Oklahoma Board of Nursing and that Respondent's license to practice registered nursing be temporarily suspended until she is accepted into the Peer Assistance Program.

### CONCLUSIONS OF LAW

The Board has jurisdiction to hear this matter pursuant to 59 O.S. §§567.1, *et seq.* and OAC §§485:10-11-1, *et seq.*, of the Rules promulgated by this Board.

This Order constitutes formal disciplinary action.

The Board concludes that by reason of Respondent's failure to appear at this hearing, the Board may declare Respondent in default and proceed with a determination pursuant to OAC §§ 485:10-11-2(c)(2) and (9) of the Rules promulgated by this Board. The Board finds that this conduct is grounds to deny, revoke, suspend, or discipline Respondent's license.

### ORDER

IT IS THEREFORE ORDERED by the Oklahoma Board of Nursing that Respondent is adjudged to be in default.

IT IS THEREFORE ORDERED by the Oklahoma Board of Nursing that Respondent is referred to the Peer Assistance Program of the Oklahoma Board of Nursing on the following terms and conditions:

1. Respondent's license to practice registered nursing is hereby temporarily suspended as of the date of this Order, which temporary suspension shall be set aside provided Respondent provides documentation, satisfactory to the Board, of Respondent's acceptance into the Peer Assistance Program within sixty (60) days of receipt of this Order.

2. If Respondent is not accepted into the Peer Assistance Program, within sixty (60) days of receipt of this Order, or having been accepted is terminated from the Program for any reason other than successful completion of Respondent's contract and treatment plan, Respondent's license is hereby revoked for a period of two (2) years.

3. Respondent is to return Respondent's pocket license card, along with any applicable fee, to the Board office to be marked: "Conditions: Peer Assistance", within five (5) working days from receipt of the Order.

4. In the event Respondent's license is revoked as provided herein, any application to reinstate Respondent's license shall not be considered by the Board until Respondent presents evidence satisfactory to the Board of compliance with the Board's Guidelines For Individuals Requesting Reinstatement After Suspension, Surrender Or Revocation For Misappropriation Or Misuse Of Drugs/Alcohol, a copy of which is attached hereto and made a part hereof. Respondent must also submit evidence of the continued qualifications for practice as set forth in the applicable Statutes and Rules of the Oklahoma Board of Nursing in effect at the time of Respondent's reinstatement.

5. In the event Respondent's license is revoked as provided herein, Respondent shall pay an administrative penalty payable to the Oklahoma Board of Nursing in the full amount of five hundred dollars (\$500.00). The administrative penalty shall be paid only by certified check, money order or cash. Any Application to Reinstate Respondent's license will not be considered until the administrative penalty is paid in full.

6. Upon Reinstatement, Respondent's license will be immediately placed in temporary suspension pending readmission to the Peer Assistance Program. Respondent shall provide documentation, satisfactory to the Board, of Respondent's acceptance into the Peer Assistance Program within sixty (60) days of reinstatement.

7. In the event the Certified Mail delivery of Respondent's Order is unsuccessful a process server will be hired to obtain service of the Order. If it is thus necessary to serve the Respondent by a process server, the Respondent shall reimburse the Board for the



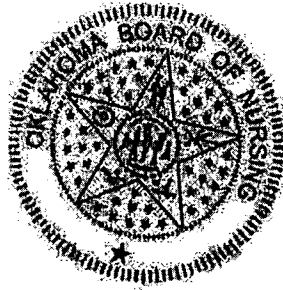
actual cost of the process server. The Respondent shall pay to the Board the actual cost of the process service within sixty (60) days of service of the process served Order. The process service fee shall be paid only by certified check, money order or cash to the Board. Failure to timely pay the actual cost of the process service will result in a three (3) month suspension of license. A suspension of license will result in termination from the Peer Assistance Program for failure to maintain an active license. The revocation will be for the period described in paragraph two (2) herein.

8. Upon successful completion by Respondent of Respondent's Contract, Amended Contract(s), and treatment plan with the Peer Assistance Program, no further Order of the Board shall be deemed necessary.

IT IS FURTHER ORDERED, that Respondent shall comply in all respects with the Nursing Practice Act, 59 O.S. Sections 567.1, *et seq.*, the Rules, OAC Title 485 Chapters 1 and 10 and Guidelines relating to nursing education, licensure and practice and this Order.

IT IS FURTHER ORDERED that this Order constitutes disciplinary action by the Board and may be used in any subsequent hearings by the Board. In the event other misconduct is reported to the Board, this Order may be used as evidence against Respondent to establish a pattern of behavior and for the purpose of proving additional acts of misconduct.

IT IS FURTHER ORDERED that except as amended herein, all of the terms and conditions of Respondent's Order entered on March 28, 2013, shall remain in full force and effect, except those previously satisfied.



SW:ad

OKLAHOMA BOARD OF NURSING

By:

  
President

**BEFORE THE OKLAHOMA BOARD OF NURSING**

IN THE MATTER OF DIANA ELENA MOJICA TURNER, R.N.  
LICENSE NO. R0100299

**SUPPLEMENTAL ORDER**

This matter comes on for review of Evaluation before the Oklahoma Board of Nursing ("Board") on the 26th day of September, 2013, at the Fairfield Inn & Suites, 4521 S.W. 15th St., Oklahoma City, Oklahoma.)

The Board is represented by Debbie McKinney, Attorney at Law. Diana Elena Mojica Turner, R.N. ("Respondent"), appears neither in person nor by counsel at the hearing on this date.

The Board, after reviewing the pleadings, hearing and considering all of the evidence and being fully advised, finds by clear and convincing evidence and enters the following Findings of Fact, Conclusions of Law and Order.

This Order is issued pursuant to the Oklahoma Nursing Practice Act, 59 O.S. §§ 567.1 *et. seq.*

**FINDINGS OF FACT**

After hearing all the evidence presented and upon due consideration thereof, the Board by clear and convincing evidence finds:

1. Proper notice of this proceeding for review of Evaluation has been served on Respondent as required by law.
2. Respondent is licensed to practice registered nursing in the State of Oklahoma and is the holder of License No. R0100299 issued by the Oklahoma Board of Nursing.

3. On March 28, 2013, Respondent was issued an Order requiring Respondent to submit documentation of an Evaluation that complies with this Board's Evaluation Criteria, for review by the Board for the purpose of determining if further Orders are necessary and proper. Said Order is hereby incorporated by reference as if set forth in full herein.

4. On July 1, 2013, Respondent's Evaluation was received in the Board office.

5. On August 8, 2013, Respondent was sent Notice that the Evaluation would be reviewed by the Board on September 26, 2013. The Notice of Evaluation is incorporated by reference as if set forth in full herein.

6. On August 23, 2013, the Oklahoma Board of Nursing received Respondent's Notice of Appearance indicating that Respondent would appear at the hearing on September 26, 2013. The Notice of Appearance is hereby incorporated by reference as if set forth in full herein.

7. Respondent failed to answer the docket call for the Oklahoma Board of Nursing discipline hearings on the date and time specified in the Notice of Hearing properly served on Respondent. Respondent is in default for her failure to appear as specified in the Notice of Hearing.

8. On September 26, 2013, the Evaluation was reviewed and accepted by the full Board. The Board recommends that Respondent be referred to the Peer Assistance Program of the Oklahoma Board of Nursing and that Respondent's license to practice registered nursing be temporarily suspended until she is accepted into the Peer Assistance Program.

## CONCLUSIONS OF LAW

The Board has jurisdiction to hear this matter pursuant to 59 O.S. §§567.1, *et seq.* and OAC §§485:10-11-1, *et seq.*, of the Rules promulgated by this Board.

This Order constitutes formal disciplinary action.

The Board concludes that by reason of Respondent's failure to appear at this hearing, the Board may declare Respondent in default and proceed with a determination pursuant to OAC §§ 485:10-11-2(c)(2) and (9) of the Rules promulgated by this Board. The Board finds that this conduct is grounds to deny, revoke, suspend, or discipline Respondent's license.

## ORDER

IT IS THEREFORE ORDERED by the Oklahoma Board of Nursing that Respondent is adjudged to be in default.

IT IS THEREFORE ORDERED by the Oklahoma Board of Nursing that Respondent is referred to the Peer Assistance Program of the Oklahoma Board of Nursing on the following terms and conditions:

1. Respondent's license to practice registered nursing is hereby temporarily suspended as of the date of this Order, which temporary suspension shall be set aside provided Respondent provides documentation, satisfactory to the Board, of Respondent's acceptance into the Peer Assistance Program within sixty (60) days of receipt of this Order.
2. If Respondent is not accepted into the Peer Assistance Program, within sixty (60) days of receipt of this Order, or having been accepted is terminated from the Program for any reason other than successful completion of Respondent's contract and treatment plan, Respondent's license is hereby revoked for a period of two (2) years.

3. Respondent is to return Respondent's pocket license card, along with any applicable fee, to the Board office to be marked: "Conditions: Peer Assistance", within five (5) working days from receipt of the Order.

4. In the event Respondent's license is revoked as provided herein, any application to reinstate Respondent's license shall not be considered by the Board until Respondent presents evidence satisfactory to the Board of compliance with the Board's Guidelines For Individuals Requesting Reinstatement After Suspension, Surrender Or Revocation For Misappropriation Or Misuse Of Drugs/Alcohol, a copy of which is attached hereto and made a part hereof. Respondent must also submit evidence of the continued qualifications for practice as set forth in the applicable Statutes and Rules of the Oklahoma Board of Nursing in effect at the time of Respondent's reinstatement.

5. In the event Respondent's license is revoked as provided herein, Respondent shall pay an administrative penalty payable to the Oklahoma Board of Nursing in the full amount of five hundred dollars (\$500.00). The administrative penalty shall be paid only by certified check, money order or cash. Any Application to Reinstate Respondent's license will not be considered until the administrative penalty is paid in full.

6. Upon Reinstatement, Respondent's license will be immediately placed in temporary suspension pending readmission to the Peer Assistance Program. Respondent shall provide documentation, satisfactory to the Board, of Respondent's acceptance into the Peer Assistance Program within sixty (60) days of reinstatement.

7. In the event the Certified Mail delivery of Respondent's Order is unsuccessful a process server will be hired to obtain service of the Order. If it is thus necessary to serve the Respondent by a process server, the Respondent shall reimburse the Board for the

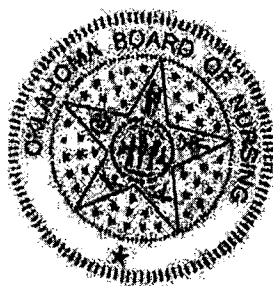
actual cost of the process server. The Respondent shall pay to the Board the actual cost of the process service within sixty (60) days of service of the process served Order. The process service fee shall be paid only by certified check, money order or cash to the Board. Failure to timely pay the actual cost of the process service will result in a three (3) month suspension of license. A suspension of license will result in termination from the Peer Assistance Program for failure to maintain an active license. The revocation will be for the period described in paragraph two (2) herein.

8. Upon successful completion by Respondent of Respondent's Contract, Amended Contract(s), and treatment plan with the Peer Assistance Program, no further Order of the Board shall be deemed necessary.

IT IS FURTHER ORDERED, that Respondent shall comply in all respects with the Nursing Practice Act, 59 O.S. Sections 567.1, *et seq.*, the Rules, OAC Title 485 Chapters 1 and 10 and Guidelines relating to nursing education, licensure and practice and this Order.

IT IS FURTHER ORDERED that this Order constitutes disciplinary action by the Board and may be used in any subsequent hearings by the Board. In the event other misconduct is reported to the Board, this Order may be used as evidence against Respondent to establish a pattern of behavior and for the purpose of proving additional acts of misconduct.

IT IS FURTHER ORDERED that except as amended herein, all of the terms and conditions of Respondent's Order entered on March 28, 2013, shall remain in full force and effect, except those previously satisfied.



SW:ad

OKLAHOMA BOARD OF NURSING

By:

  
President



**BEFORE THE OKLAHOMA BOARD OF NURSING**

IN THE MATTER OF DIANA ELENA MOJICA TURNER, r.n.  
LICENSE NO. R0100299 (TEMPORARILY SUSPENDED)

**ORDER DENYING MOTION TO RECONSIDER**

This matter comes before the Oklahoma Board of Nursing ("Board") on the 30th day of January, 2014, at Reed Conference Center, 5800 Will Rogers Road, Midwest City, Oklahoma, for the argument on Respondent's Motion to Reconsider.

The Board is represented by Debbie McKinney, Attorney at Law. Diana Elena Mojica Turner, r.n. ("Respondent"), appears in person with counsel, Timothy J. Pickens, at the hearing on this date.

1. On March 28, 2013, Respondent was issued an Order requiring Respondent to submit documentation of an Evaluation that complies with this Board's Evaluation Criteria, for review by the Board for the purpose of determining if further Orders are necessary and proper. Said Order is hereby incorporated by reference as if set forth in full herein.

2. On August 8, 2013, Respondent was sent Notice by certified/restricted mail that the Evaluation would be reviewed by the Board on September 26, 2013, and received Notice on August 16, 2013. The Notice of Evaluation is incorporated by reference as if set forth in full herein. On August 23, 2013, the Oklahoma Board of Nursing received Respondent's Notice of Appearance indicating that Respondent would appear at the hearing on September 26, 2013. The Notice of Appearance is hereby incorporated by reference as if set forth in full herein.

3. In spite of informing the Board in her Notice of Appearance that she would be present for the September 26, 2013 hearing, Respondent did not appear. At the hearing, the Board temporarily suspended the Respondent's registered nurse license pending the

~~Respondent's entry into the Peer Assistance Program within sixty (60) days of receipt of the~~

Order. Respondent received the September 26, 2013 Supplemental Order on October 11, 2013, and pursuant to the Order had sixty (60) days from October 11, 2013, or until December 10, 2013, to enter the Peer Assistance Program. The Respondent failed to enter the Peer Assistance Program by December 10, 2013. Said Supplemental Order is hereby incorporated by reference as if set forth in full herein.

4. On October 23, 2013, the Board received Respondent's Motion to Reconsider. The stated bases for Respondent's Motion to Reconsider was: Respondent was stressed the day before hearing because her bank account was frozen by the Oklahoma Department of Human Services; the Respondent left a message on Board staff's voice mail that she was unable to attend the hearing on September 26, 2013; the Evaluation submitted to the Board was "tainted" because of the "stress of the current custody battle, fear of losing her children and fear of not being able to work as a nurse"; and page 3 of the Evaluation did not suggest Peer Assistance but rather intensive outpatient substance treatment. The Motion to Reconsider is incorporated by reference as if set forth in full herein.

5. On November 20, 2013, proper notice of this hearing for Motion to Reconsider was served on Respondent as required by law. A copy of Complainant's Response to the Motion was also mailed to Respondent's counsel on November 20, 2013.

6. On November 20, 2013, the Board received Complainant's Response to Respondent's Motion to Reconsider. The Response argued that none of the Respondent's four stated reasons are within the grounds for reconsideration or rehearing provided in the Administrative Procedures Act ("APA") 75 O.S. Section 317 A. 1-5. The Complainant's Response also argues that Respondent's Motion to Reconsider is untimely because it was not

filed within ten (10) days of receipt of the Supplemental Order as required by Section 317.A of the APA.

A final agency order issued by an administrative head of an agency shall be subject to rehearing, reopening or reconsideration by such administrative head. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final agency order within (10) days from the date of entry of such final agency order.

75 O.S. §317.A.; see also, Attorney General Opinion *See, Linda C. Campbell, Executive Director, Oklahoma Board of Dentistry*, 1998 OK AG 39.

The Complainant also stated that the Notice of the hearing on September 26, 2013, properly served on Respondent, provided that:

[I]f you fail to appear at the hearing after receiving proper notice, the Oklahoma Board of Nursing may determine you have agreed to the recommendations in the Evaluation, if any, and further, the Board may revoke, suspend or otherwise discipline your license as it may deem necessary pursuant to the Rules promulgated by the Board. . . .

The Complainant's Response to Respondent's Motion to Reconsider is incorporated by reference as if set forth in full herein.

7. On December 4, 2013, the Board received Respondent's Notice of Appearance to attend the Motion to Reconsider hearing. The Notice of Appearance is hereby incorporated by reference as if set forth in full herein.

The Board, after reading the Motion to Reconsider and the Response, hearing argument from parties, and being fully advised in the premises, declined to reconsider its September 26, 2013, ruling.

The Board has considered the effect of the APA and the Attorney General Opinion in reaching its Conclusions of Law. The Board holds that both the plain language of the statute and the interpretation of it by the Attorney General prohibit the Board from hearing the

~~Motion to Reconsider because the Board does not have jurisdiction.~~

IT IS THEREFORE ORDERED that Respondent's Motion to Reconsider is denied.

IT IS FURTHER ORDERED that Respondent's license to practice registered nursing is to remain temporarily suspended and Respondent is referred to the Peer Assistance Program. The temporary suspension shall be set aside provided Respondent provides documentation, satisfactory to the Board, of Respondent's acceptance into the Peer Assistance Program within sixty (60) days of receipt of this Order. The Board declines to discipline Respondent for failing to enter the Peer Assistance Program within the original sixty (60) day period for the reason that Respondent had a motion pending during that time.

IT IS FURTHER ORDERED that Respondent shall comply in all respects with the Nursing Practice Act, 59 O.S. Sections 567.1, *et seq.*, the Rules, OAC Title 485 Chapters 1 and 10 and Guidelines relating to nursing education, licensure and practice and this Order.

IT IS FURTHER ORDERED, prior to the Respondent's successful completion of this Order, that any violations of the Oklahoma Nursing Practice Act by the Respondent, except as set forth herein, may require Respondent's appearance before the Board to Show Cause why Respondent's license should not be revoked or other such action taken as the Board deems necessary and proper.

IT IS FURTHER ORDERED that all disciplinary action and penalties imposed by Supplemental Order of the Board entered on September 26, 2013, remain in effect.



OKLAHOMA BOARD OF NURSING

President

A handwritten signature in black ink, appearing to read "John J. [unclear]", is written over a horizontal line.

SW:ad