



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 P. Herman*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

\*\*\*\*\*

In the Matter of §  
Registered Nurse License Number 648906 §  
issued to BURNEY HERMAN §

ORDER OF THE BOARD

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 648906, issued to BURNEY HERMAN, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal proceedings, notice and hearing.

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

FINDINGS OF FACT

1. Respondent's license to practice professional nursing in the State of Texas is currently in suspended status.
2. Respondent waived representation by counsel, informal proceedings, notice and hearing.
3. Respondent received an Associate Degree in Nursing from Midland College, Midland, Texas, on December 1, 1997. Respondent was licensed to practice professional nursing in the State of Texas on February 24, 1998.
4. Respondent's nursing employment history includes:
 

02/98 - 09/10	Unknown	
10/10 - 07/12	RN	Mission Trail Baptist Hospital San Antonio, Texas

Respondent's nursing employment history continued:

08/12 - 10/12	Unknown	
11/12 - Present	RN	Mission Trail Baptist Hospital San Antonio, Texas

5. On or about December 12, 2013, Respondent was issued a Confidential Agreed Order for Peer Assistance Program by the Board which required him to participate and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Finding of Fact, Conclusions of Law and Confidential Agreed Order dated December 12, 2013, is attached and incorporated herein by reference as part of this Order.
6. On or about June 12, 2014, Respondent became noncompliant with the Confidential Agreed Order for Peer Assistance Program issued to him on December 12, 2013, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) participation agreement. On or about May 1, 2014, Respondent submitted a specimen for a drug screen that resulted positive for Ethyl Glucuronide (ETG) and Ethyl Sulfate (ETS), both of which are metabolites of alcohol (Ethanol). Respondent also failed to enroll into an intensive outpatient program as requested by TPAPN. Stipulation Number Three (3) of the Confidential Agreed Order dated December 12, 2013, reads:  
  
"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."  
  
On or about June 12, 2014, Respondent was dismissed from TPAPN and referred to the Texas Board of Nursing.
7. On or about July 21, 2014, Respondent was issued an Order of Temporary Suspension by the Board. A copy of the Order of Temporary Suspension dated July 21, 2014, is attached and incorporated, by reference as part of this Order.
8. Formal Charges were filed on July 21, 2014.
9. Formal Charges were mailed to Respondent on July 21, 2014.
10. On July 23, 2014, the Board received a notarized statement from Respondent voluntarily surrendering the right to practice nursing in Texas. A copy of Respondent's notarized statement, dated July 13, 2014, is attached and incorporated herein by reference as part of this Order.

11. 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.
12. 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 Texas Occupations Code, Sections 301.451-301.555, 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 §217.12(9) & (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(1) & (10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 648906, heretofore issued to BURNEY HERMAN, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
5. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.
6. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.
7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TAC §§213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Registered Nurse License Number 648906, heretofore issued to BURNEY HERMAN, to practice nursing in the State of Texas, is/are accepted by the Executive Director on behalf of the Texas Board of Nursing. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice professional nursing, use the title of "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/s is/are 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.

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.

Effective this 23rd day of July, 2014.

TEXAS BOARD OF NURSING

By:



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

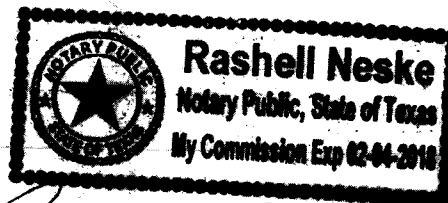
Texas State Board of Nursing  
333 Guadalupe St  
Suite 3-460  
Austin, Tx. 78701  
Attn: Paul Longoria  
**Date 7/13/14**

To Whom It may concern,

My name is Burney Herman. I have Been a Registered Nurse since 1997. Due to poor judgement on my part I was directed to enroll in TPAPN. I have been unable to find a nursing job since I have been in the program. I tested positive for alcohol (of which I do NOT drink) and refused to spend the several thousand dollars for "intensive outpatient therapy". Subsequently i was expelled from the program. I wish now to surrender my license with plans to apply for reinstatement after 12 months of sobriety and rehabilitation.

Sincerely yours,

  
Burney Herman





BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of	§	CONFIDENTIAL
Registered Nurse License Number 648906	§	AGREED ORDER
issued to BURNEY HERMAN	§	FOR
	§	PEER ASSISTANCE PROGRAM

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of BURNEY HERMAN, Registered Nurse License Number 648906, 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) and 301.453, Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered under the authority of Section 301.466(d), Texas Occupations Code, and approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on November 13, 2013.

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 Midland College, Midland, Texas, on December 1, 1997. Respondent was licensed to practice professional nursing in the State of Texas on February 24, 1998.

5. Respondent's nursing employment history includes:

02/98 - 09/10	Unknown	
10/10 - 07/12	RN	Mission Trail Baptist Hospital San Antonio, Texas
08/12 - 10/12	Unknown	
11/12 - Present	RN	Mission Trail Baptist Hospital San Antonio, Texas

6. At the time of the incident, Respondent was employed as a registered nurse with Mission Trail Baptist Hospital, San Antonio, Texas, and had been in this position for nine (9) months.
7. On or about August 1, 2013, to September 26, 2013, while employed with Mission Trail Baptist Hospital, San Antonio, Texas, Respondent diverted Fentanyl belonging to the facility and patients thereof, for his personal use, in that he admitted to said diversion. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications. Respondent's conduct also placed the hospital in violation of Chapter 481 (Controlled Substances Act) of the Texas Health and Safety Code.
8. On or about October 1, 2013, while employed with Mission Trail Baptist Hospital, San Antonio, Texas, Respondent engaged in the intemperate use of Fentanyl in that he submitted a specimen for a drug screen which resulted positive for Fentanyl. Respondent also admitted to said intemperate use. Possession of Fentanyl is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Fentanyl 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.
9. 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.
10. 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.
11. Respondent's conduct as described in the preceding Finding(s) of Fact resulted from or was significantly influenced by Respondent's substance use disorder.
12. 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 §217.12(5), (8), (10)(A), (10)(D), and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9) & (10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 648906, heretofore issued to BURNEY HERMAN, up to, and 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 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 and complete the enrollment process, 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.

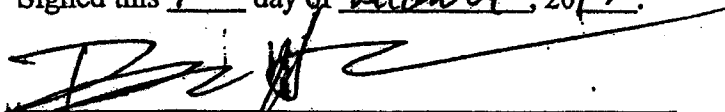
IT IS FURTHER AGREED that, while RESPONDENT remains in compliance with the terms of this Order, this Order shall remain confidential in accordance with the authority outlined in Section 301.466(d), Texas Occupations Code. However, should Respondent fail to successfully complete the terms of this Order or should Respondent commit a subsequent violation of the Nursing Practice Act or Board Rules, this Order shall be treated as prior disciplinary action and will become public information.

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.

RESPONDENT'S CERTIFICATION

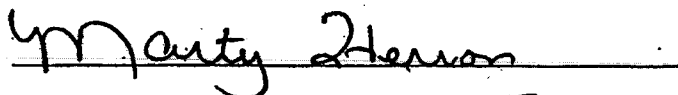
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer 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.

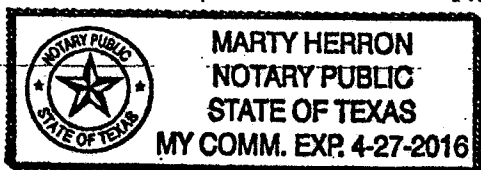
Signed this 10 day of December, 2013.

  
\_\_\_\_\_  
BURNLEY HERMAN, RESPONDENT

Sworn to and subscribed before me this 10 day of DEC., 2013.

SEAL

  
\_\_\_\_\_  
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 Confidential Agreed Order for Peer Assistance Program that was signed on the 10th day of December, 2013, by BURNEY HERMAN, Registered Nurse License Number 648906, and said Order is final.

Entered and effective this 12th day of December, 2013.



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

In the Matter of  
Permanent Registered Nurse  
License Number 648906  
Issued to BURNEY HERMAN,  
Respondent

§ BEFORE THE TEXAS  
§  
§  
§  
§ BOARD OF NURSING

**ORDER OF TEMPORARY SUSPENSION**

TO: BURNEY HERMAN  
707 E REYNOLDS  
STAMFORD, TX 79553

TO: BURNEY HERMAN  
PO BOX 912  
STAMFORD, TX 79553

A public meeting of the Texas Board of Nursing was held on July 21, 2014 at 333 Guadalupe, Room 3-460, Austin, Texas, in which the Temporary Suspension of Permanent Registered Nurse License Number 648906, issued to BURNEY HERMAN was considered pursuant to Section 301.4551, TEXAS OCCUPATIONS CODE. Staff of the Texas Board of Nursing appeared and presented evidence and information concerning the conduct of BURNEY HERMAN and whether his continued practice as a nurse would constitute a continuing and imminent threat to the public welfare.

After review and due consideration of the evidence and information presented, the Board finds that the following charge is substantiated:

**CHARGE I.**

On or about June 12, 2014, Respondent became noncompliant with the Confidential Agreed Order for Peer Assistance Program issued to him on December 12, 2013, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) participation agreement. On or about May 1, 2014, Respondent submitted a specimen for a drug screen that resulted positive for Ethyl Glucuronide (ETG) and Ethyl Sulfate (ETS), both of which are metabolites of alcohol (Ethanol). Respondent also failed to enroll into an intensive outpatient program as requested by TPAPN.

Stipulation Number Three (3) of the Confidential Agreed Order dated December 12, 2013, reads:

"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."

On or about June 12, 2014, Respondent was dismissed from TPAPN and referred to the Texas Board of Nursing.

The Texas Board of Nursing further finds that, given the nature of the charge concerning his fitness to practice, the continued practice of nursing by BURNEY HERMAN constitutes a continuing and imminent threat to public welfare and that the temporary suspension of Permanent Registered Nurse License Number 648906, is justified pursuant to Section 301.4551, TEXAS OCCUPATIONS CODE.


NOW, THEREFORE, IT IS ORDERED that Permanent Registered Nurse License Number 648906, issued to BURNEY HERMAN, to practice nursing in the State of Texas be, and the same is/are, hereby SUSPENDED IMMEDIATELY in accordance with Section 301.4551, TEXAS OCCUPATIONS CODE.

IT IS FURTHER ORDERED that a probable cause hearing be conducted in accordance with Section 301.455(c) not later than seventeen (17) days following the date of the entry of this order, and a final hearing on the matter be conducted in accordance with 301.455(d) not later than the 61<sup>st</sup> day following the date of the entry of this order.

Entered this 21<sup>st</sup> day of July, 2014.

TEXAS BOARD OF NURSING

BY:

  
KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR

In the Matter of  
Permanent Registered Nurse  
License Number 648906  
Issued to BURNEY HERMAN,  
Respondent

§  
§  
§  
§  
§

BEFORE THE TEXAS

BOARD OF NURSING

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, BURNEY HERMAN, is a Registered Nurse holding License Number 648906, which is in current 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 June 12, 2014, Respondent became noncompliant with the Confidential Agreed Order for Peer Assistance Program issued to him on December 12, 2013, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) participation agreement. On or about May 1, 2014, Respondent submitted a specimen for a drug screen that resulted positive for Ethyl Glucuronide (ETG) and Ethyl Sulfate (ETS), both of which are metabolites of alcohol (Ethanol). Respondent also failed to enroll into an intensive outpatient program as requested by TPAPN. Stipulation Number Three (3) of the Confidential Agreed Order dated December 12, 2013, reads:

"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."

On or about June 12, 2014, Respondent was dismissed from TPAPN and referred to the Texas Board of Nursing. A copy of the Findings of Fact, Conclusions of Law, and Confidential Agreed Order dated December 12, 2013, 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](http://www.bon.texas.gov).

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, and for Fraud, Theft and Deception, which 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 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 December 12, 2013.

Filed this 21<sup>st</sup> day of July, 2014.

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

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

Robert 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 or (512)305-7401

Attachments: Order of the Board dated December 12, 2013

D/2014.05.23