

IN THE MATTER OF
PERMANENT REGISTERED NURSE
LICENSE NUMBER 580819

ISSUED TO
DANIEL JOSEPH MCLELLAN

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§

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.
William C. Thomas
Executive Director of the Board

ORDER OF THE BOARD

TO: DANIEL JOSEPH MCLELLAN
502 S. HOLMES STREET
LA PORTE, TX 77571

During open meeting held in Austin, Texas, on **August 19, 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 580819, previously issued to DANIEL JOSEPH MCLELLAN, 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 19th day of August, 2014.

TEXAS BOARD OF NURSING

BY:



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

Attachment: Formal Charge filed June 26, 2014.

Re: Permanent Registered Nurse License Number 580819
Issued to DANIEL JOSEPH MCLELLAN
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 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

DANIEL JOSEPH MCLELLAN
502 S. HOLMES STREET
LA PORTE, TX 77571

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 580819	§	
Issued to DANIEL JOSEPH MCLELLAN,	§	
Respondent	§	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DANIEL JOSEPH MCLELLAN, is a Registered Nurse holding License Number 580819, 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 August 15, 2013, Respondent failed to comply with the Order issued to him on August 14, 2012, by the Texas Board of Nursing. Noncompliance is the result of his failure to comply with Stipulation Number Three (3) of the Agreed Order which states, in pertinent part:

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics....

A copy of the August 14, 2012, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this pleading.

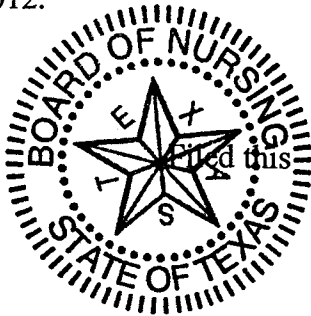
The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

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 August 14, 2012.



26th day of June, 2014.

TEXAS BOARD OF NURSING

R. Kyle Hensley

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 dated August 14, 2012.

D/2014.05.23

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of
Registered Nurse License Number 580819
issued to DANIEL JOSEPH MCLELLAN,
PETITIONER for Exception

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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 A. Thomas
Executive Director of the Board

ORDER GRANTING PETITIONER'S REQUEST FOR EXCEPTION

A public meeting of the Eligibility and Disciplinary Committee of the Board, hereinafter referred to as the Committee, was held on August 14, 2012 at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, to consider the Petition for Exception and supporting documents filed by DANIEL JOSEPH MCLELLAN, hereinafter referred to as PETITIONER.

PETITIONER appeared in person. PETITIONER was represented by Richard Kuniansky, Attorney at Law.

Board Members in attendance were: Tamara Cowen, MSN, RN; Sheri Crosby, JD; and Beverly Jean Nutall, LVN. Staff present were: Katherine A. Thomas, MN, RN, FAAN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director, Enforcement Division; Earl E. Stearns, CFE, Supervising Investigator; Diane E. Burell, Investigator; and Andrea Gonzalez, Legal Secretary.

After review and due consideration of the filed Petition, the Committee voted to GRANT the Petition for Exception.

IT IS THEREFORE ORDERED that this Order and the stipulations contained herein SHALL supercede all previous stipulations required by any Order entered by the Texas Board of Nursing.

IT IS FURTHER ORDERED that while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Petitioner to practice nursing in the State of Texas.

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

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

IT IS FURTHER ORDERED that:

(1) PETITIONER SHALL obtain and read the Texas Nursing Practice Act and the Rules and Regulations Relating to Nurse Education, Licensure, and Practice.

(2) PETITIONER SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code §§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.

(3) PETITIONER SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of

Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER'S successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure.

Board-approved courses may be found at the following Board website address:

<http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>.

IT IS FURTHER ORDERED, SHOULD PETITIONER PRACTICE AS A NURSE IN THE STATE OF TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND PETITIONER MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) OR A VOCATIONAL NURSE (LVN) LICENSE, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(4) PETITIONER SHALL notify each present employer in nursing of this Order of the Board and the stipulations on Petitioner's license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulations on Petitioner's license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(5) PETITIONER SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a nurse.

(6) For the first year of employment as a Nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as Petitioner and immediately available to provide assistance and intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). The PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(7) For the remainder of the stipulation period, PETITIONER SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as Petitioner, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Petitioner is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a nurse.

(9) PETITIONER SHALL NOT practice as a nurse in any critical care area, **with the exception of the operating room**, for one (1) year of employment as a nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(10) PETITIONER SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, Propofol, or other synthetic opiates for one (1) year of employment as a nurse.

(11) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the Petitioner by the Board, periodic reports as to Petitioner's capability to practice nursing. These reports shall be completed by the nurse who supervises the Petitioner. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for three (3) year(s) of employment as a nurse.

(12) PETITIONER SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, PETITIONER SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and PETITIONER SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.**

(13) PETITIONER SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the stipulation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the Petitioner's place of employment at any time during the stipulation period and require Petitioner to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. PETITIONER SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Petitioner's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

(14) PETITIONER SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. PETITIONER SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the Petitioner's progress in therapy, rehabilitation and capability to safely practice nursing. The report must indicate whether or not the Petitioner's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended beyond the initial three (3) months, the reports shall then be required at the end of each three (3) month period for the remainder of the stipulation period, or until Petitioner is dismissed from therapy.

(15) PETITIONER SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. PETITIONER SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by Petitioner. PETITIONER SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER ORDERED, that upon full compliance with the terms of this Order, all encumbrances will be removed from Petitioner's license to practice nursing in the State of Texas and Petitioner shall be eligible for nurse licensure compact privileges, if any.

Entered this 14th day of August, 2012.



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

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 580819 §
issued to DANIEL JOSEPH MCLELLAN § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of DANIEL JOSEPH MCLELLAN, Registered Nurse License Number 580819, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(2) & (10)(effective through 9/1/01), and Section 301.452(b)(9) & (10), Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on July 18, 2011, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

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 is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received a Diploma in Nursing from Saint Rita School of Nursing, Sydney, Nova Scotia on August 1, 1988. Respondent was licensed to practice professional nursing in the State of Texas on August 3, 1992.
5. Respondent's professional nursing employment history includes:

08/92 - 1996

OR RN / PACU RN

St. Mary Hospital
Galveston, Texas

Respondent's professional nursing employment history continued:

1996 - 2000	RN	Gulf Home Health Galveston, Texas
1996 - 2000	RN	A Med Home Health Galveston, Texas
1996 - 2002	OR Supervisor	UTMB Galveston, Texas
06/02 - 09/04	OR RN	Park Plaza Hospital Houston, Texas
09/04 - Present	OR Charge RN	Memorial Hermann Hospital Houston, Texas
2005 - 05/09	OR RN	Tex-Med Staffing Houston, Texas
08/06 - 08/08	RN First Assistant	Key Surgical Assistants of Texas Houston, Texas
12/08 - 01/09	RN	Nightingale Nurses, LLC Boca Raton, Florida
02/09 - Present	RN	Progenicare, LLC Austin, Texas

6. On or about September 25, 2002, Respondent pled guilty and was convicted of "Driving While Intoxicated," a Class B Misdemeanor (committed on August 11, 2002) in the Harris County Court at Law No. 1, Houston, Texas, under Cause Number 1130064. Respondent was sentenced to confinement for a period of three (3) days and ordered to pay a fine and court costs.

7. On or about November 17, 2002, Respondent submitted a renewal application to the Board of Nurse Examiners for the State of Texas in which he provided false, deceptive, and/or misleading information, in that he answered "no" to the following question:

"Since issuance or last renewal, have you plead guilty (including no contest plea), been found guilty or convicted of any felony or misdemeanor other than a minor traffic violation? (Note: DWI or DUI, including first offenses, are not considered minor traffic violations.)"

On or about September 25, 2002, Respondent pled guilty and was convicted of "Driving

While Intoxicated," a Class B Misdemeanor (committed on August 11, 2002) in the Harris County Court at Law No. 1, Houston, Texas, under Cause Number 1130064.

8. On or about January 9, 2009, while employed with Nightingale Nurses, LLC, Boca Raton, Florida, and on assignment at Southeast Baptist Hospital, San Antonio, Texas, Respondent engaged in the intemperate use of Barbiturates in that he submitted a specimen for a pre-employment drug screen which resulted positive for Barbiturates. The use of Barbiturates 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. Respondent admits to the conduct outlined in Finding of Fact Number Six (6). He states that in his own mind he was not admitting guilt but rather simply not contesting the charges in order to dispose of the case. He does not believe he was impaired. Regarding the conduct outlined in Finding of Fact Number Seven (7), Respondent did not believe that a 'no contest' plea to a misdemeanor DWI would be a matter of concern to the Board. He interpreted the question as whether he was actually guilty of DWI, or entered a plea of guilty to DWI. Respondent now realizes he answered the question incorrectly. It was never his intent to mislead. Regarding the conduct outlined in Finding of Fact Number Eight (8), Respondent states that he was not employed by Nightingale Nurses, but rather by Tex-Med Staffing and was on assignment at Southeast Baptist Hospital, San Antonio, Texas. Respondent states that he was involved in a serious car accident in June 2006 which caused herniated discs. Respondent had two (2) surgeries in 2009. Respondent has been on prescription painkillers from the time of the accident until present and that any drugs in his system were prescription drugs. He states that the drugs did not interfere with his ability perform his job duties as a registered nurse. Respondent states that his supervisors were aware of his accident, aware he was working part-time, and he assumes were aware that he was taking prescription medication. Respondent adds that his latest surgery as a result of the injuries suffered in the crash was on January 11, 2010.
10. On or about April 16, 2011, to July 15, 2011, Respondent underwent a forensic evaluation with chemical dependency component conducted by Gerald Busch, MD. During the evaluation, Respondent acknowledged that he was treated for alcohol dependence at Memorial Hermann Prevention and Recovery Center in October 2004. Respondent also acknowledged that he has had a substance dependence upon prescription opiates (Oxycontin and Percocet) prescribed in abundance by his pain management specialist. Respondent confirmed that he used his girlfriend's Fioricet at the time of his pre-employment screen for Nightingale Nurses in 2009. As a result of his dependency upon narcotic pain pills, Respondent submitted himself for treatment at Detox Houston on January 15, 2011. Respondent was placed on Subutex both for detoxification as well as maintenance due to his continue pain problems with his lumbar back. Dr. Busch concludes that, in view of Respondent's efforts at and motivation for recovery, and the absence of findings of continued difficulty with alcohol or drugs, as well as his current involvement with agonist therapy to

prevent relapse despite his back pain, it is his opinion within reasonable medical probability that Respondent will be able to consistently behaving in accordance with Board rules 213.27-213.29, as well as the minimum nursing standards set forth in Board Rule 217.11. Dr. Busch adds that it is his opinion that within reasonable medical probability, this same pattern of effort and motivation will also allow Respondent to consistently avoid behaviors identified by the Board as constituting unprofessional conduct.

11. 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.
12. Formal Charges were filed on January 28, 2010.
13. Formal Charges were mailed to Respondent on January 29, 2010.

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 violations of Section 301.452(b)(2) & (10)(effective 9/1/01), and Section 301.452(b)(9) & (10) Texas Occupations Code, and 22 TEX. ADMIN. CODE §§217.12(1) & (22)(effective 1/31/04) and 217.12(10)(A) & (10)(D).
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 580819, heretofore issued to DANIEL JOSEPH MCLELLAN, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a LIMITED LICENSE with Stipulations, and RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§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 nurse licensure compact 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:

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

(2) SHOULD RESPONDENT desire to return to a clinical practice setting, which would require her to provide direct patient care, RESPONDENT SHALL petition the Board for such approval.

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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 violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I 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 July, 2011.Daniel Joseph McEllan
DANIEL JOSEPH McELLAN, Respondent

Sworn to and subscribed before me this _____ day of _____, 20____.

SEAL

Notary Public in and for the State of _____

Approved as to form and substance.

Richard Kunjansky
RICHARD KUNJANSKY, Attorney for RespondentSigned this 20 day of July, 2011.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 18th day of July, 2011, by DANIEL JOSEPH MCLELLAN, Registered Nurse License Number 580819, and said Order is final.

Effective this 13th day of September, 2011.



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