



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. Plummer*  
Executive Director of the Board

IN THE MATTER OF  
PERMANENT REGISTERED NURSE  
LICENSE NUMBER 545174  
ISSUED TO  
DARRYL S PAYTON

§  
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§

BEFORE THE TEXAS  
BOARD OF NURSING  
  
ELIGIBILITY AND  
DISCIPLINARY COMMITTEE

**ORDER OF THE BOARD**

TO: Darryl S. Payton  
P.O. Box 41654  
Plymouth, MN 55442

During open meeting held in Austin, Texas, on **Wednesday, November 12, 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 545174, previously issued to DARRYL S PAYTON, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this 12th day of November, 2014.

TEXAS BOARD OF NURSING



BY:

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

Attachment: Formal Charges filed August 5, 2014.

Re: Permanent Registered Nurse License Number 545174  
Issued to DARRYL S. PAYTON  
DEFAULT ORDER - REVOKE


CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of November, 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

Darryl S. Payton  
P.O. Box 41654  
Plymouth, MN 55442

BY:



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

<b>In the Matter of</b>	§	<b>BEFORE THE TEXAS</b>
<b>Permanent Registered Nurse</b>	§	
<b>License Number 545174</b>	§	
<b>Issued to DARRYL S. PAYTON,</b>	§	
<b>Respondent</b>	§	<b>BOARD OF NURSING</b>

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DARRYL S. PAYTON, is a Registered Nurse holding License Number 545174, 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 October 22, 2013, Respondent received a Final Decision and Order of Denial of Application for Endorsement of Registered Nurse License Under the Maryland Nurse Practice Act from the Maryland Board of Nursing, wherein his application for Endorsement of Registered Nurse License in the State of Maryland was denied. A copy of the Order dated October 22, 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)(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 is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Final Decision and Order of Denial of Application for Endorsement of Registered Nurse License Under the Maryland Nurse Practice Act from the Maryland Board of Nursing dated October 22, 2013.

Filed this 5<sup>th</sup> day of August, 2014.

TEXAS BOARD OF NURSING



James W. Johnston, General Counsel  
Board Certified - Administrative Law  
Texas Board of Legal Specialization  
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Attachments: Final Decision and Order of Denial of Application for Endorsement of Registered Nurse License Under the Maryland Nurse Practice Act from the Maryland Board of Nursing dated October 22, 2013.

D/2014.05.23

IN THE MATTER OF

DARRYL SEAN PAYTON

RN ENDORSEMENT  
APPLICANT

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BEFORE THE MARYLAND

BOARD OF NURSING

OAG Case No. 12 – BP – 485

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**FINAL DECISION AND ORDER OF DENIAL OF APPLICATION FOR  
ENDORSEMENT OF REGISTERED NURSE LICENSE UNDER THE MARYLAND  
NURSE PRACTICE ACT**

**BACKGROUND**

Based on information received, the Maryland Board of Nursing (the "Board") provided Darryl Sean Payton (the "Applicant"), with Notice of Initial Denial of Application for Endorsement of Registered Nurse License under the Maryland Nurse Practice Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 8-101 *et. seq.*, (2009 Repl. Vol. & 2011 Supp.)

On July 23, 2013, the Board forwarded a copy of this unexecuted Final Decision and Order of Denial of Application for Endorsement of Registered Nurse License (the "Order"), to the Applicant by certified and regular mail to the Applicant's last known address registered with the Board. Included with the unexecuted Order, was a letter from the Board informing the Applicant that pursuant to § 8-317 of the Act and the Administrative Procedure Act (the "APA"); he was entitled to an evidentiary hearing before the Board could deny his application for endorsement of licensure. The Applicant was also informed that he had thirty (30) days from the date of the letter included with the unexecuted Order to request an evidentiary hearing. Additionally, the Applicant was placed on notice that if a request for an evidentiary hearing was not received within the thirty (30) days, this Order would be executed as written. Respondent did not request a hearing.

### FINDINGS OF FACT

The Board finds that:

1. On or about September 14, 2012, the Board received the Applicant's Application for Endorsement of RN License ("Endorsement Application"). The Applicant indicated on his application that Illinois<sup>1</sup> was the state in which he was originally licensed by examination.
2. In response to the directive on the Endorsement Application to "indicate other states where you are licensed," the Applicant listed the state of Texas.<sup>2</sup>
3. On his Endorsement Application, the Applicant answered "no" to the question: "Have you ever had any disciplinary action taken against your license in any state?"
4. On September 18, 2012, the Applicant was issued a Temporary RN license in the State of Maryland. His temporary license expired on December 17, 2012.
5. It was discovered by the Board that the Applicant holds additional RN licenses in: Oklahoma (issued August 27, 1999, active with an expiration date of July 31, 2014); Minnesota (issued September 14, 2012, active with an expiration date of July 31, 2013); Missouri (issued December 16, 1997, expired on April 30, 2001); Nebraska (issued May 3, 1991, expired on October 31, 2000).

### Complaint from Hospital

6. On or about October 24, 2012, the Board received a complaint regarding the Applicant from Hospital, located in Baltimore, Maryland.
7. On October 1, 2012, the Applicant was hired as a nurse manager on the oncology unit. On October 12, 2012, the Applicant's employment was terminated.
8. On or about July 18, 2012, the Applicant submitted an Employment Application to

<sup>1</sup> Respondent was issued a RN license in Illinois on October 2, 1987. His license expired on May 31, 1996.

<sup>2</sup> The State of Texas is a member of the Nurse Multistate Licensure Compact, under the Act, Subtitle 7A. The Applicant holds a Single State RN license in Texas which is active and scheduled to expire on July 31, 2013.

Payton, Darryl; RN Endorsement Applicant

Hospital. In response to the request to list professional licensure, the Applicant indicated that he held a Texas RN license; CCRN in CA<sup>3</sup> and that he had applied for a license in MN.

9. According to the complaint, on October 11, 2012, the Applicant initiated an interaction with a Social Work Fellow ("SWF") that constituted sexual harassment and on October 12, 2012, the Applicant again approached SWF using sexually suggestive language and asked the SWF for intimate and personal information.

#### Board Investigator's Interviews

10. The Senior Social Worker ("SSW") reported that after her shift on October 11, 2012, SWF mentioned to her that he had an interesting day and they agreed to speak the next morning.
11. On the morning of October 12, 2012, SSW observed the Applicant pacing the hallway and believing he was a family member asked if he needed help. The Applicant introduced himself as the new nurse manager and stated he was awaiting the arrival of SWF.
12. A short time later, as SSW passed SWF's office, the door was open and she observed the Applicant "hovering" over SWF's desk and noted that SWF appeared to be uncomfortable. SSW entered the office and informed the Applicant she had a meeting with SWF. The Applicant did not immediately leave and SSW repeated her request for him to leave and he left the office.
13. SWF informed SSW that the previous day, the Applicant had requested to meet with him at a specified time and that the Applicant reprimanded him for not meeting at the

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<sup>3</sup> There is no record on the California Board of Nursing's website that the Applicant ever held a RN license.



Payton, Darryl; RN Endorsement Applicant

- specified time and questioned him about intimate details of his life, including questions about when was the last time he had an orgasm and was he alone or with someone. The Applicant also spoke about the "woodies" he got a work.
14. SWF also reported that the Applicant told him that without clothing the Applicant "looked good" and that being in the military, SWF must be in good shape and then he touched SWF's upper legs.
  15. SWF further stated the Applicant had engaged in similar conversations with SWF-1. SSW followed up with SWF-1, who described nearly identical conversations and behaviors by the Applicant.
  16. SSW reported the incidents to her supervisor, the Director of Patient and Family Services Program ("Director"), who reported the incidents to Director of Nursing Services for Oncology ("DNS").
  17. Both SSW and Director declined to provide the names of SWF and SWF-1, stating that they were in the Navy and did not want their identities disclosed.
  18. DNS confirmed the information received from Director and stated she consulted with Human Resources and immediately terminated the Applicant's employment and did not provide him with a reason for his termination. DNS also declined to provide the names of the SWFs.
  19. DNS stated that further investigation after the incident discovered that the Applicant was previously licensed in Nebraska as a RN and Psychologist and had surrendered both licenses.
  20. During a telephone interview on November 8, 2012, the Applicant reported to the Board's Investigator that he was unaware of any concerns about his behavior and ethical

Payton, Darryl: RN Endorsement Applicant

violations, he was no longer in Maryland and was no longer interested in being licensed in Maryland and wished to withdraw his application.

### Discipline in the State of Nebraska

21. On April 6, 1998, the State of Nebraska-Dept. of Health & Human Services, Regulation & Licensure ("Nebraska") filed a Petition for Disciplinary Action ("Petition") against the Applicant's license to practice psychology.
22. The Factual Allegations of the Petition included the following:
  - i. In approximately April 1996, the Applicant began providing psychological treatment to a 16 year old high school boy ("Client").
  - ii. The treatment focused on difficulties Client was experiencing with high school and family issues.
  - iii. The Applicant developed a close relationship with Client, his siblings and parents.
  - iv. The Applicant discontinued formal treatment sessions with Client in approximately January or February 1997 but maintained a social and friendly relationship with Client and his family.
  - v. Subsequent to discontinuing treatment with Client, the Applicant began to tutor Client for various school exams and college entrance exams.
  - vi. Near the beginning of the fall 1997 semester, the Applicant was present in Client's apartment for tutoring. During the visit, the Applicant massaged Client's unclothed body including Client's genitals. This was the first time the Applicant had sexual contact with Client.
  - vii. Several weeks following the first massage, the Applicant was again in Client's apartment. Following a tutoring session, the Applicant again massaged Client including Client's genitals, while Client was unclothed.
  - viii. During the second massage, the Applicant attempted to get Client to touch the Applicant's genitals, but Client resisted.
  - ix. All contact with the Applicant was discontinued following the second massage.
  - x. At the time of both sexual encounters, the Applicant was 36 years old married male and Client an eighteen year old college freshman.
23. On September 3, 1998, the Applicant entered into an Agreed Settlement with Nebraska, in which he admitted to the allegations contained in the Petition and voluntarily surrendered his license to practice psychology.
24. On November 13, 1998, Nebraska issued an Order, adopting the Agreed Settlement including the sanction and finding that the facts as set forth in the Petition "are taken as

Payton, Darryl: RN Endorsement Applicant

true and adopted herein."

25. On November 19, 1999, Nebraska accepted the Voluntary Surrender of the Applicant's RN license (46177).
26. On April 4, 2002, Nebraska-Board of Psychologists voted against granting the Applicant's petition for reinstatement of his psychology license, finding he was not fit to practice psychology and it would not be in the public interest to reinstate his license.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Applicant violated § 8-316 (a) of the Act as follows:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or for another;
- (5) Willfully and knowingly:
  - (ii) Gives any false or misleading information about a material matter in an employment application;
- (8) Does an act that is inconsistent with the generally accepted professional standards in the practice of registered nursing...;
- (10) Has violated any provision of this title; *to wit*,  
§ 8-302. Qualifications of applicants.
  - (g) Moral character. – An applicant for a license or certification under this section shall be of good moral character.


### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED**, that the Application of Darryl Sean Payton for Endorsement of Registered Nurse License in the State of Maryland is hereby **DENIED**; and be it further

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**ORDERED** that this Final Decision and Order is a **PUBLIC DOCUMENT** pursuant to the Maryland Public Information Act, State Govt. §§ 10-611, *et seq.* (2009 Repl. Vol. & 2011 Supp).

10/20/13  
Date

  
Nancy Adams, MBA, RN  
President  
Maryland Board of Nursing

**Notice of Appeal Rights**

Any person aggrieved by a final decision of the Board under Md. Health Occ. Code Ann. § 8-316 may take a direct judicial appeal within thirty (30) days) as provided by Md. Health Occ. Code Ann. § 8-318, Md. State Gov't. Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules, including Md. Rule 7-203 ("Time for Filing Action").