



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.  
*Katherine A. Thomas*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of § AGREED  
Registered Nurse License Number 764256 §  
issued to CODY LEE SMITH § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of CODY LEE SMITH, Registered Nurse License Number 764256, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code. Respondent waived notice and hearing and agreed to the entry of this Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on June 17, 2016.

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 notice and hearing and agreed to the entry of this Order.
- 3. Respondent's license to practice as a professional nurse in the State of Texas is in current status.
- 4. Respondent received a Baccalaureate in Nursing from the University of Texas at Tyler, Tyler, Texas, on December 19, 2008. Respondent was licensed to practice professional nursing in the State of Texas on January 22, 2009.
- 5. Respondent's professional nursing employment history includes:
 

1/2009 - 10/2009	RN	Mother Frances Hospital
		Tyler, Texas

Respondent's professional nursing employment history continued:

10/2009 - 1/2011	RN	Heart to Heart Hospice Tyler, Texas
1/2011 - 7/2011	RN	East Texas Medical Center Tyler, Texas
8/2011 - 11/2012	RN	Hospice of East Texas Tyler, Texas
11/2012 - 10/2013	RN	Hospice Plus Dallas, Texas
11/2013	Unknown	
12/2013 - 9/2014	RN	Grace Hospice of East Texas Tyler, Texas
10/2014 - 12/2014	Unknown	
1/2015 - Unknown	RN	Fresenius Dialysis Tyler, Texas

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with Grace Hospice of East Texas, Tyler, Texas, and had been in that position for nine (9) months.
7. On or about September 23, 2014, while employed as a Registered Nurse with Grace Hospice of East Texas, Tyler, Texas, Respondent lacked fitness to practice professional nursing in that he admitted to receiving prescribed Hydrocodone for chronic back pain that developed into an addiction. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
8. On or about September 23, 2014, while employed as a Registered Nurse with Grace Hospice of East Texas, Tyler, Jacksonville, Texas, Respondent diverted Hydrocodone/APAP from the patients thereof in that he admitted to filling medications for patients and keeping them for himself. Respondent's conduct was likely to defraud the patients of the cost of the medications, and is a violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).

9. On or about July 23, 2015, while employed as a Registered Nurse with Fresenius Dialysis, Tyler, Texas, and while participating in the Texas Peer Assistance Program for Nurses (TPAPN), Respondent engaged in the intemperate use of Hydromorphone in that he provided a specimen for a random drug screen which resulted positive for Hydromorphone. Possession of Hydromorphone is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Hydromorphone by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.
10. On or about August 25, 2015, Respondent submitted a Timely License Renewal Form to the Texas Board of Nursing in which he answered "Yes" to the question: "Have you, within the past 24 months or since your last renewal, for any criminal offense, including those pending appeal:
- A. been arrested or any pending criminal charges?
  - B. been convicted of a misdemeanor?
  - C. been convicted of a felony?
  - D. pled nolo contendere, no contest, or guilty?
  - E. received deferred adjudication?
  - F. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?
  - G. been sentenced to serve jail or prison time? court-ordered confinement?
  - H. been granted pre-trial diversion?
  - I. been cited or charged with any violation of the law?
  - J. been subject of a court-martial; Article 15 violation, or received any form of military judgment/punishment/action?"

Respondent disclosed that on or about May 7, 2015, he was charged under Cause No. 007-0544-15 for DIVERSION OF CONTROLLED SUBSTANCE, a felony offense committed on or about August 15, 2014.

On or about July 14, 2015, Respondent entered a plea of guilty to POSSESSION OF CONTROLLED SUBSTANCE PAGE 3 < 28G, a misdemeanor offense committed on or about August 15, 2014, under Cause No. 003-81952-15. As a result of the plea, the proceedings against Respondent were deferred, without entering an adjudication of guilt, and Respondent was placed on probation for a period of 2 years, and ordered to pay a fine and court costs. On or about July 15, 2015, Cause No. 007-0544-15 was dismissed without prejudice.

11. On or about April 19, 2016, Respondent failed to repay his Texas Guaranteed Student Loan, as provided in Section 57.491 of the Texas Education Code. Respondent's failure to repay

his Texas Guaranteed Student Loan may have deprived other applicants of funds for nursing school loans.

12. In response to Findings of Fact Numbers Seven (7), through Ten (10), Respondent states he suffered incredible pain in his lower back for many years. The pain got progressively worse until the point he would do anything for relief. While prescribed Hydrocodone, Respondent states he developed a dependence that plagued him for a couple of months. After seeing a specialist, the source of his problems were discovered, and he received three (3) procedures that restored his quality of life. Since the changes, Respondent states he has completed two intensive outpatient rehabilitation programs, been treated for chemical dependency, and he is currently serving a two (2) year probation period in which he submits random urinalysis and must comply with court ordered conditions.
13. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
14. Formal Charges were filed on March 30, 2016.
15. Formal Charges were mailed to Respondent on April 8, 2016.
16. 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.
17. Respondent's conduct as described in the preceding Finding(s) of Fact resulted from or was significantly influenced by Respondent's substance use disorder.
18. 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 substance use disorder.
19. 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 301.451-301.555 , 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

§217.11(1)(A),(1)(B)&(1)(T) and 22 TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(4),(5),(6)(G), (7),(8),(10)(A),(10)(D),(11)(B)&(13).

4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 764256, heretofore issued to CODY LEE SMITH, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
5. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.
6. 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.

### TERMS OF ORDER

#### I. SANCTION AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 764256, previously issued to CODY LEE SMITH, to practice nursing in Texas is hereby **SUSPENDED** and said suspension is **ENFORCED** until Respondent:

- A. **Applies to, is accepted into, and completes enrollment in the Texas Peer Assistance Program for Nurses (TPAPN)**, including payment of a non-refundable participation fee in the amount of five hundred dollars (\$500.00); and
- B. Waives confidentiality and **provides a copy of the fully executed TPAPN participation agreement to the Board.**

IT IS FURTHER AGREED, upon verification of successful completion of the above requirements, the Suspension will be **STAYED**, and RESPONDENT will be placed on **PROBATION** for such a time as is required for RESPONDENT to successfully complete the TPAPN **AND** until Respondent fulfills the additional requirements of this Order.

- C. RESPONDENT SHALL pay all re-registration fees, if applicable, and

RESPONDENT'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.

- D. 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.
- E. RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.
- F. This Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.
- G. This Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- H. Respondent may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where Respondent wishes to work.

## II. COMPLIANCE WITH LAW

While under the terms of this Order, RESPONDENT agrees to 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.

## III. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education course(s) **within one (1) year of the suspension being stayed:**

**A Board-approved course in Texas nursing jurisprudence and ethics** that 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. Home study courses and video programs will not be approved.

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at [www.bon.texas.gov/compliance](http://www.bon.texas.gov/compliance).*

#### **IV. TEXAS GUARANTEED STUDENT LOAN CORPORATION REQUIREMENTS**

RESPONDENT SHALL initiate contact with the Texas Guaranteed Student Loan Corporation and make arrangements to repay the student loan. Upon approval of a repayment contract with the Texas Guaranteed Student Loan Corporation, RESPONDENT SHALL CAUSE the Texas Guaranteed Student Loan Corporation to submit verification directly to the Board that the default status has been removed from Respondent's Texas Guaranteed Student Loan.

In accordance with Section 57.491 of the Texas Education Code, RESPONDENT'S license(s) to practice nursing SHALL NOT be renewed in the event that RESPONDENT'S Texas Guaranteed Student Loan is in default status at the time of renewal.

#### **V. FURTHER COMPLAINTS**

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

**VI. EFFECT OF NONCOMPLIANCE**

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 TEMPORARY 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.

**VII. RESTORATION OF UNENCUMBERED LICENSE(S)**

Upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT may be eligible for nurse licensure compact privileges, if any.

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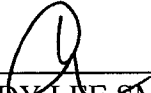
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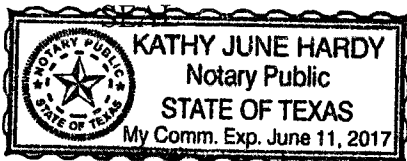
RESPONDENT'S CERTIFICATION

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 entry of this Order and all conditions of said 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 8 day of August, 2014.

  
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CODY LEE SMITH, Respondent

Sworn to and subscribed before me this 8 day of August, 2014.



Kathy June Hardy  
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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 ratify and adopt the Agreed Order that was signed on the 8<sup>th</sup> day of August, 2016, by CODY LEE SMITH, Registered Nurse License Number 764256, and said Order is final.

Effective this 9<sup>th</sup> day of September, 2016.



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