



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or its of record in the offices of the Texas Board of Nursing.
Arlene P. Starnes
Executive Director of the Board

DOCKET NUMBER 507-16-5124

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 628737,
ISSUED TO
TAMMY L. FOSTER**

**§
§
§
§
§**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

OPINION AND ORDER

**TO: TAMMY L. FOSTER
128 RENNER
PALESTINE, TX 75801**

**SARAH STARNES
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting of the Eligibility and Disciplinary Committee of the Texas Board of Nursing (Committee) on December 13, 2016, the Committee, pursuant to 22 Tex. Admin. Code §213.23, considered the following items: (1) Order No. 1, *Dismissing Case*, issued by the ALJ in the above cited matter; (2) Staff's recommendation to the Committee that the Respondent's registered nursing license be revoked by default; and (3) Respondent's recommendation to the Committee regarding the above cited matter, if any.

On September 26, 2016, the ALJ convened a hearing on the merits in this matter. Staff of the Board was present for the hearing. However, the Respondent was not present at the hearing, and no one appeared on her behalf. During the hearing on September 26, 2016, Staff introduced evidence into the record demonstrating that Respondent had been sent a Notice of Hearing by first class certified mail return receipt requested to her last known address of record maintained by the Board in accordance with 22 Tex. Admin. Code §213.10(a). The ALJ found that Staff's notice was adequate and issued Order No. 1, *Dismissing Case*, granting Staff's Motion for Default and dismissing the case from the docket of SOAH and remanding it to the Board for informal disposition on a default basis in accordance with the Government Code §2001.056 and §2001.058(d-1).

The Committee, after review and due consideration of Order No. 1, issued by the ALJ in the above cited matter, finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with the Government Code §2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Occupations Code Chapter 301 (Nursing Practice Act) for retention of Respondent's license to practice professional nursing in the State of Texas. The Committee further finds that the Formal Charges were properly initiated and filed in accordance with the Occupations Code §301.458. The Committee further finds that proper and timely notice regarding the violations alleged in the Formal Charges was given to Respondent in accordance with the requirements of the Government Code §2001.051 and §2001.052 and 1 Tex. Admin. Code §155.501. The Committee further finds that the

Respondent failed to appear in accordance with 22 Tex. Admin. Code Chapter 213 and 1 Tex. Admin. Code §155.501. As a result of the Respondent's failure to appear, the Committee has determined that the factual allegations listed in the Formal Charges are to be deemed admitted by default and the Committee is authorized to enter a default order against the Respondent pursuant to the Government Code §2001.056 and §2001.058(d-1) and 22 Tex. Admin. Code §213.22. Further, the Committee has determined that it is entitled to revoke the Respondent's registered nursing license pursuant to 22 Tex. Admin. Code §213.23 and §213.33(m).

Therefore, the Committee hereby adopts the factual allegations, which have been deemed admitted, and the conclusions of law contained in the Formal Charges, which are attached hereto and incorporated herein by reference for all purposes, and 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 in accordance with the Government Code Chapter 2001 and 22 Tex. Admin. Code §213.23(l), as applicable. 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.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 628737, previously issued to TAMMY L. FOSTER, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 13th day of December, 2016.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Formal Charges

In the Matter of	§	BEFORE THE TEXAS
Permanent Registered Nurse	§	
License Number 628737	§	
Issued to TAMMY L FOSTER,	§	
Respondent	§	BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, TAMMYL FOSTER, is a Registered Nurse holding License Number 628737, which is in delinquent status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about October 13, 2015, Respondent became noncompliant with the Confidential Agreed Order for Peer Assistance Program issued to her by the Texas Board of Nursing on July 9, 2015.

~~Non-compliance is the result of Respondent's failure to comply with Stipulation Number One (1), Section B, of the Order, dated July 9, 2015, which reads:~~

"(I)(B). Within ninety (90) days following the date of entry of this Order, RESPONDENT SHALL sign and execute the TPAPN participation agreement and complete the enrollment process, which SHALL include payment of a non-refundable participation fee payable to TPAPN in the amount of five hundred dollars (\$500.00)."

On or about October 13, 2015, Respondent was dismissed from the Texas Peer Assistance Program for Nurses (TPAPN) for failure to initiate participation within the required time frame.

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.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on adopted policies related to Substance Use Disorders and Other Alcohol and Drug Related Conduct, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of 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, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

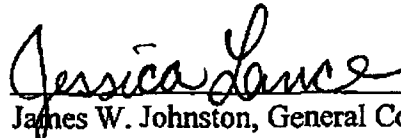
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NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order dated July 9, 2015.

Filed this 14th day of April, 2016.

TEXAS BOARD OF NURSING



James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300

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Attachments: Order of the Board dated July 9, 2015

D(2015.11.18)

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of § CONFIDENTIAL
Registered Nurse License Number 628737 § AGREED ORDER FOR
issued to TAMMY L FOSTER § PEER ASSISTANCE PROGRAM

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of TAMMY L FOSTER, Registered Nurse License Number 628737, 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)(10), 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 29, 2015.

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 delinquent status.
4. Respondent received an Associate Degree from Trinity Valley Community College, Kaufman, Texas, on May 1, 1996. Respondent was licensed to practice professional nursing in the State of Texas on June 11, 1996.
5. Respondent's nursing employment history is unknown.

6. On or about September 10, 2012, Respondent entered a plea of Guilty to POSS MARIJ <=2 OZ DRUG FREE ZONE, a Class A misdemeanor offense committed on or about January 13, 2012, in the County Court at Law No. 2, Henderson County, Texas, under Cause No. 2012-0464CL2. 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 nine (9) months, and was ordered to pay a fine and court costs.
7. On or about November 19, 2013, Respondent was found Guilty and convicted of POSSESSION OF MARIJUANA, a Class B misdemeanor offense committed on or about February 7, 2012, in the County Court, Anderson County, Texas, under Cause No. 59533. As a result of the conviction, Respondent was sentenced to confinement in the Anderson County Jail for a period of one hundred eighty (180) days; however, the sentence of confinement was suspended, and Respondent was placed on probation for a period of six (6) months, and ordered to pay a fine and court costs.
8. On or about September 17, 2014, Respondent presented to Paul Andrews, Ph.D., Tyler, Texas, for psychological testing, and an interview. As a result, Dr. Andrew's was able to offer the following Conclusion and Recommendation: "...My recommendation is that Ms. Foster pursue outpatient substance abuse treatment as well as evaluation for depression. This woman said she was able to be drug free when on probation but reports that she thinks she would need medication now if she were not using marijuana. She also reported having benefitted from counseling in the past and is encouraged to participate again. In addition to suggested outpatient treatment, I recommend this woman be monitored for drug use if allowed to continue working as a nurse."
9. In response to Findings of Fact Number Six (6) and Seven (7), Respondent states the first incident occurred when she was pulled over due to her passenger not wearing a seatbelt. The officer searched the car and found marijuana in Respondent's pocket. The second arrest happened after her fiancé threw marijuana he was carrying to Respondent when he was pulled over. Respondent says she panicked and threw the marijuana out of the car. Respondent states she is capable of safely caring for patients, and has never used the drug inappropriately, or used before performing nursing duties.
10. Formal Charges were filed on July 22, 2014.
11. Formal Charges were mailed to Respondent on July 24, 2014.
12. 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.
13. Respondent's conduct as described in the preceding Finding(s) of Fact resulted from or was significantly influenced by Respondent's substance use disorder.

14. 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.
15. 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 §217.12(13).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 628737, heretofore issued to TAMMY L FOSTER, 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.
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.

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

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):

- A. Within forty-five (45) days following the date of entry of this Order, RESPONDENT SHALL apply to TPAPN;

- B. Within ninety (90) days following the date of entry of this Order, RESPONDENT SHALL sign and execute the TPAPN participation agreement and complete the enrollment process, which SHALL include payment of a non-refundable participation fee payable to TPAPN in the amount of five hundred dollars (\$500.00);
- C. 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;
- 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; and
- E. RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

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 entry of this Order:

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.*

IV. CONFIDENTIALITY REQUIREMENTS

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.

V. 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.

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RESPONDENT'S CERTIFICATION

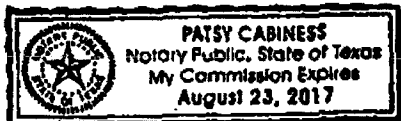
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. 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 2 day of July, 2015.


FAMILY L. FOSTER, Respondent

Sworn to and subscribed before me this 2 day of July, 2015.

SEAL



Patsy Cabiness
Notary Public in and for the State of Texas

Approved as to form and substance.


Frederick C. Shelton, Attorney for Respondent

Signed this 2 day of July, 2015

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 2nd day of July, 2015, by TAMMY L. FOSTER, Registered Nurse License Number 628737, and said Order is final.

Effective this 9th day of July, 2015.



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