



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.
Patricia A. Thomas
Executive Director of the Board

DOCKET NUMBER 507-17-3265

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 879952,
ISSUED TO
CARL JOHN CONTI**

**§
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§**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: CARL JOHN CONTI
1900 WALNUT ST. APT. 1105
BASTROP, TX 78602**

**CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on October 26-27, 2017, the Texas Board of Nursing (Board) considered the following items: (1) Order No. 2, *Conditional Order of Default Dismissal and Remand*, issued by the ALJ in the above cited matter; (2) Staff's recommendation that the Board revoke the Respondent's registered nursing license by default; and (3) Respondent's recommendation to the Board regarding the above cited matter, if any.

On August 21, 2017, 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 his behalf. During the hearing on August 21, 2017, 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 his 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. 2, *Conditional Order of Default Dismissal and Remand*, 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.

The Board, after review and due consideration of Order No. 2, 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 Board further finds that the Formal Charges were properly initiated and filed in accordance with the Occupations Code §301.458. The Board 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 Board 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 Board

has determined that the factual allegations listed in the Formal Charges are to be deemed admitted by default and the Board is authorized to enter a default order against the Respondent pursuant to the Government Code §2001.056 and 22 Tex. Admin. Code §213.22. Further, the Board has determined that it is entitled to revoke the Respondent's registered nursing license pursuant to 22 Tex. Admin. Code §213.33(m).

Therefore, the Board 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 879952, previously issued to CARL JOHN CONTI, 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 26th day of October, 2017.

TEXAS BOARD OF NURSING


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

Attachment: Formal Charges

In the Matter of
Permanent Registered Nurse
License Number 879952
Issued to CARL JOHN CONTI,
Respondent

§ BEFORE THE TEXAS
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§
§
§ BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, CARL JOHN CONTI, is a Registered Nurse holding License Number 879952, 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 April 14, 2016, Respondent became non-compliant with the Agreed Order issued to him by the Texas Board of Nursing on May 12, 2014. Noncompliance is the result of his failure to comply with Stipulation Number Three (3) of the Order, dated May 12, 2014, which reads:

"(3) PETITIONER SHALL comply will all requirements of the TPAPN contract during its term."

On or about April 14, 2016, Respondent withdrew from the TPAPN. Additionally, Respondent had two (2) dilute urine specimens on December 28, 2015, and April 6, 2016, missed two (2) drug screens on September 30, 2015, and December 16, 2015, and had several missed check-ins.

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 Disciplinary Sanction 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.

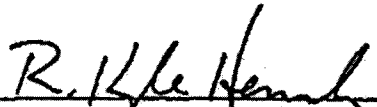
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NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order dated May 12, 2014.

Filed this 9th day of December, 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
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John F. Legris, Assistant General Counsel
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333 Guadalupe, Tower III, Suite 460
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Attachments: Order of the Board dated May 12, 2014

D(2016.10.03)

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of,	§	CONFIDENTIAL ELIGIBILITY
CARL JOHN CONTI,	§	AGREED ORDER FOR
PETITIONER for Eligibility for Licensure.	§	PEER ASSISTANCE PROGRAM

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the Petition for Declaratory Order and supporting documents filed by CARL JOHN CONTI, hereinafter referred to as PETITIONER, together with any documents and information gathered by staff and Petitioner's Certification contained herein.

Information received by the Board produced evidence that PETITIONER may be ineligible for licensure pursuant to Sections 301.452(b)(9)&(10) and 301.453, Texas Occupations Code.

PETITIONER waived representation by counsel, 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 February 24, 2014.

FINDINGS OF FACT

1. On or about March 25, 2013, PETITIONER submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §213.30.
2. Petitioner waived representation by counsel, informal proceedings, notice and hearing, and consented to the entry of this Order.
3. Petitioner was not enrolled in a professional nursing program at the time of this petition.

4. Petitioner completed the Petition for Declaratory Order and answered "Yes" to the question which reads as follows: *"For any criminal offense, including those pending appeal, have you:*

- A. been convicted of a misdemeanor?*
- B. been convicted of a felony?*
- C. pled nolo contendere, no contest, or guilty?*
- D. received deferred adjudication?*
- E. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?*
- F. been sentenced to serve jail or prison time? court-ordered confinement?*
- G. been granted pre-trial diversion?*
- H. been arrested or have any pending criminal charges?*
- 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?*

(You may only exclude Class C misdemeanor traffic violations.)"

5. Petitioner disclosed the following criminal history, to wit:

A. On or about July 16, 2008, Petitioner was arrested by the Bastrop County Sheriff's Office, Bastrop, Texas, and subsequently charged under Cause No. 45196 for POSSESSION OF MARIJUANA < 2 OZ, a Class B misdemeanor offense committed on July 16, 2008. On or about January 28, 2010, Cause No. 45196 was dismissed in the County Court at Law of Bastrop County, Texas, for the reason: Successfully completed deferred prosecution in that all terms and conditions of the agreement have been complied with.

B. On or about September 27, 2011, Petitioner was arrested by the Fayette County Sheriff's Office, La Grange, Texas, for SILENT/ABUSIVE CALLS TO 911 SERVICE, a Class B misdemeanor offense.

On or about September 27, 2011, Petitioner entered a plea of Guilty to SILENT/ABUSIVE CALLS TO 911 SERVICE, a Class B misdemeanor offense committed on September 27, 2011, in the County Court at Law of Fayette County, Texas, under Cause No. 25551. As a result of the plea, the proceedings against Petitioner were deferred without entering an adjudication of guilt and Petitioner was placed on probation for a period of two (2) years. On or about November 29, 2012, Petitioner received an Order Reducing Sentence and Terminating Deferred Probation.

C. On or about November 28, 2011, Petitioner was arrested by issued warrant by the Bastrop County Sheriff's Office, Bastrop, Texas, for HEALTH AND SAFETY VIOLATION and LIQUOR VIOLATION, both Class C misdemeanor offenses.

On or about March 12, 2010, Petitioner entered a plea of Guilty to and was convicted of POSSESSION OF ALCOHOLIC, a Class C misdemeanor in the Municipal Court of Bastrop, Texas, under Citation No. 10-69791. As a result of the conviction, Petitioner was ordered to pay a fine and court costs. On or about December 21, 2011, Petitioner made full payment.

On or about March 12, 2010, Petitioner entered a plea of Guilty to and was convicted of POSSESSION OF DRUG, a Class C misdemeanor in the Municipal Court of Bastrop, Texas, under Citation No. 10-69791. As a result of the conviction, Petitioner was ordered to pay a fine and court costs. On or about December 21, 2011, Petitioner made full payment.

6. There is no evidence of any subsequent criminal conduct.
7. On or about December 9, 2013, Petitioner was seen by Jerome R. Schmidt, Ph.D., Psychologist, to under a chemical dependency evaluation. Dr. Schmidt states that Petitioner is a rather bright and accomplished young man who presents significant signs and symptoms of alcohol abuse; however, insufficient indications exist to render a diagnosis of Alcohol Dependence. Furthermore the diagnosis of Opiate Dependence in remission is rendered based on Petitioner's self-report as well as the significant scores on the SASSI-3. Recommendations are that Petitioner be placed under the supervision of TPAPN and ordered to follow all recommendations made with the program.
8. The safety of patients and the public requires that all persons licensed to practice nursing be fit, sober, and able to consistently practice nursing in autonomous roles under demanding and stressful conditions.
9. Petitioner has sworn that, with the exception of matters disclosed in connection with the Petition for Declaratory Order, his past behavior conforms to the Board's professional character requirements at 22 TEX. ADMIN. CODE §213.27.
10. Petitioner presented no evidence of behavior which is inconsistent with good professional character.
11. The Executive Director considered evidence of Petitioner's past behavior in light of the character factors set out in 22 TEX. ADMIN. CODE §213.27 and determined that Petitioner currently demonstrates the criteria required for good professional character.
12. The Executive Director considered evidence of Petitioner's past criminal conduct in light of the considerations and criteria provided in 22 TEX. ADMIN. CODE §§213.28 & 213.33, and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.

13. The Executive Director considered evidence of Petitioner's substance abuse/chemical dependency, and subsequent rehabilitation as provided in 22 TEX. ADMIN. CODE §213.29 and in accordance with 22 TEX. ADMIN. CODE §213.33.
14. Petitioner's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.
15. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
16. Petitioner has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.
17. Petitioner shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452(b), Texas Occupations Code.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Sections 301.452 and 301.453, Texas Occupations Code.
2. On or about March 25, 2013, PETITIONER submitted a Petition for Declaratory Order requesting a determination of eligibility for licensure in compliance with Sections 301.252, 301.253, 301.257 and 301.258, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §213.30.
3. Petitioner's history reflects conduct which may constitute grounds for denial of a license under Section 301.452(b)(9)&(10), Texas Occupations Code.
4. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.
5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 TEX. ADMIN. CODE §213.28 and evaluating the direct relationship to nursing according to 22 TEX. ADMIN. CODE §213.28 and, if applicable, Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.
6. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 TEX. ADMIN. CODE §213.27, and pursuant to 22 TEX. ADMIN. CODE §213.33, the Board is satisfied that the individual is able to consistently conform his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

7. 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.
8. This Order is conditioned upon the accuracy and completeness of Petitioner's disclosures. Any subsequently discovered discrepancies will result in investigation and possible disciplinary action, up to revocation of Petitioner's license(s).

ORDER

NOW, THEREFORE, IT IS AGREED that, upon meeting the requirements for graduation of an appropriate program in nursing education and payment of any required fees, PETITIONER is ELIGIBLE to sit for the National Council Licensure Examination for Practical Nurses (NCLEX-PN® Examination) and/or the National Council Licensure Examination for Registered Nurses (NCLEX-RN® Examination), as applicable.

IT IS FURTHER AGREED that PETITIONER SHALL NOT be eligible for temporary authorization to practice as a Graduate Vocational Nurse (GVN) and/or as a Graduate Nurse (GN), as applicable, in the State of Texas.

IT IS FURTHER AGREED that, upon payment of any required fees and upon attaining a passing grade on the appropriate National Council Licensure Examination, PETITIONER shall be issued the applicable license to practice nursing in the State of Texas, and while under the terms of this Order all licenses issued to PETITIONER shall be subject to the following stipulations:

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

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.

IT IS FURTHER AGREED and 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 AGREED and ORDERED that while PETITIONER'S license(s) is/are 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.

NOW, THEREFORE, IT IS FURTHER AGREED and ORDERED that PETITIONER SHALL comply with the following conditions for such a time as is required for PETITIONER to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) PETITIONER SHALL, within forty-five (45) days of licensure, apply to TPAPN and SHALL, within ninety (90) days of licensure, 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, PETITIONER SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Texas Board of Nursing.

(3) PETITIONER SHALL comply with all requirements of the TPAPN contract during its term.

(4) PETITIONER SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN contract.

IT IS FURTHER AGREED that, while PETITIONER 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 PETITIONER fail to successfully

complete the terms of this Order or should PETITIONER 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 PETITIONER fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or revocation of PETITIONER'S license(s) and nurse compact licensure privileges, if any, to practice nursing in the State of Texas.

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PETITIONER'S CERTIFICATION

I am the Petitioner in this matter. I have fully and truthfully disclosed all of my past conduct which could constitute grounds for licensure ineligibility, and I have caused a complete and accurate criminal history to be submitted to the Texas Board of Nursing from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. I certify that my past behavior, except as disclosed in my application and/or petition, has been in conformity with the Board's character rule. I have provided the Board with complete and accurate documentation of my past conduct in violation of the penal law of any jurisdiction which was disposed of through any procedure short of conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my application and/or petition, I acknowledge that I have read and I understand Sections 301.157(d), 301.252, 301.253, 301.257, 301.258, 301.260, 301.452, and 301.453, Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 TEX. ADMIN. CODE §§213.27, 213.28, 213.29, and 213.30. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations as set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Temporary Permit to practice nursing. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any license from the Texas Board of Nursing.

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 my potential ineligibility for licensure through peer assistance.

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 EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of my license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas, as a consequence of my noncompliance.

I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Texas Board of Nursing ratify this Order.

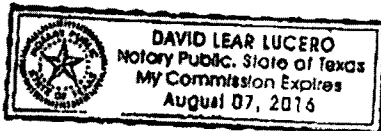
Signed this 30 day of April, 2014.

[Handwritten Signature]

CARL JOHN CONTI, PETITIONER

Sworn to and subscribed before me this 30 day of APRIL, 2014.

SEAL



[Handwritten Signature]
Notary Public in and for the State of TX

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby ratify and adopt the Confidential Eligibility Agreed Order for Peer Assistance Program that was signed on the 30th day of April, 2014, by CARL JOHN CONTI, PETITIONER for Eligibility for Licensure, and said Order is final.

Effective this 12th day of May, 2014.



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