



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

In the Matter of	§	AGREED ORDER
SHERRI ANN KIRSCHBAUM,	§	FOR
Registered Nurse License Number 775881,	§	ELIGIBILITY &
Vocational Nurse License Number 202243	§	DISCIPLINE
& PETITIONER for Eligibility for Licensure	§	

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the Application for Licensure as an Advanced Practice Registered Nurse and Prescriptive Authority, which has been processed as a Petition for Declaratory Order, herein referred to as the Petition, pursuant to 22 TEX ADMIN. CODE §221.4(a)(7), and supporting documents filed by SHERRI ANN KIRSCHBAUM, Registered Nurse License Number 775881 and Vocational Nurse License Number 202243, hereinafter referred to as Petitioner, requesting a determination of eligibility for licensure in compliance with Section 301.257, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §221.4(a), 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 subject to discipline and ineligible for licensure pursuant to Sections 301.452(b)(10)&(13) and 301.453, Texas Occupations Code.

Petitioner waived notice and hearing and agreed to the entry of this Agreed Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on December 4, 2019.

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 Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license(s).

2. Petitioner waived notice and hearing, and agreed to the entry of this Agreed Order.
3. On or about October 22, 2018, Petitioner submitted the Petition requesting a determination of eligibility for licensure.
4. Petitioner received a Certificate in Vocational Nursing from Hill College, Cleburne, Texas, on December 15, 2005. Petitioner received an Associate Degree in Nursing from Excelsior College, Albany, New York, on June 1, 2009. Petitioner received a Master's Degree in Nursing from South University, Savannah, Georgia, in September 2018. Petitioner was licensed to practice vocational nursing in the State of Texas on January 17, 2006. Petitioner was licensed to practice professional nursing in the State of Texas on September 29, 2009.
5. Petitioner's license to practice as a vocational nurse in the State of Texas is in delinquent status. Petitioner's license to practice as a professional nurse in the State of Texas is in current status.
6. Petitioner's nursing employment history includes:

1/2006 – 11/2006	Licensed Vocational Nurse	Trinity Mission of Burleson Burleson, Texas
5/2006 – 6/2007	Licensed Vocational Nurse	Kindred Hospital
6/2007 – 4/2009	Unknown	
4/2009 – 1/2010	LVN/RN	Kindred Hospital
9/2009 – 8/2010	Registered Nurse	Dr. Ashai Fort Worth, Texas
2010	Registered Nurse	Kindred Hospital
1/2010 – 12/2010	Registered Nurse	Baylor Hospital
12/2010 – 2/2011	Unknown	
2/2011 – 11/2014	Registered Nurse	Matlock Place Health and Rehab Arlington, Texas
9/2014 – 6/2016	Registered Nurse	Novus Health Services/Optim Frisco, Texas

Petitioner's nursing employment history continued:

9/2015 – 6/2016	Registered Nurse	Choice Plus/Apex/ Dependable Hospice Care/ Texas Best Hospice Frisco, Texas
6/2016 – 12/2018	Registered Nurse	Envoy Hospice Fort Worth, Texas
12/2018 – Present	Unknown	

7. At the time of the initial incident, Petitioner was employed as a Registered Nurse with Envoy Hospice, Fort Worth, Texas, and had been in that position for two (2) years and four (4) months.
8. On or about October 1, 2018 through December 13, 2018, while employed as a Registered Nurse with Envoy Hospice, Fort Worth, Texas, and after Patient VS expired, Respondent violated professional boundaries in that Respondent allowed the patient's husband to ride in her car with Respondent to nursing visits. Respondent's conduct violated the professional boundaries of the nurse-client relationship and was likely to injure the client and/or the client's significant other in that it could have resulted in confusion between the needs of the nurse and those of the client and/or the client's significant other. In addition, Respondent's conduct exposed the patients unnecessarily to a risk of harm from use, accessing or disclosure of their confidential medical information without their written authorization and constitutes a violation of HIPAA (The Health Insurance Portability and Accountability Act).
9. On or about January 1, 2019 through May 15, 2019, after Patient VS expired and Respondent was no longer employed with Envoy Hospice, Fort Worth, Texas, Respondent violated professional boundaries in that Respondent engaged in an inappropriate relationship and lived with the patient's husband. In addition, Respondent went on vacation with him and accepted financial assistance. Respondent's conduct was likely to injure the client and/or the client's significant other in that it could have resulted in confusion between the needs of the nurse and those of the client and/or the client's significant other.
10. On or about January 1, 2019 through May 15, 2019, while living with the husband of former patient VS, Respondent brought in and left documentation in the home containing patients' confidential personal health information. Respondent's conduct exposed the patients unnecessarily to a risk of harm from use, accessing or disclosure of their confidential medical information without their written authorization and constitutes a violation of HIPAA (The Health Insurance Portability and Accountability Act).
11. In response to Finding of Fact Number Seven (7), Respondent admits that on one occasion, the patient's widower drove her to a nursing facility, where she had patients to visit. Respondent states the widower offered to drive her because she was visibly fatigued and

had worked long hours the day before. Respondent emphasizes that the widower did not attend or observe any patients and waited in the car. Respondent denies any other incidents and denies that she violated professional boundaries. In response to Finding of Fact Number Eight (8), Respondent admits she lived with the widower for about a month due to a personal emergency and temporarily moved in with the main purpose of securing her property. Respondent denies any romantic or sexual relationship with the widower. Respondent admits to going on a trip with the widower in his RV at the widower's behest to avoid a potential conflict with her estranged spouse. Respondent states financial assistance was imposed upon her. Respondent states she attempted to make arrangements to reimburse the widower Respondent denies she violated professional boundaries. In response to Finding of Fact Nine (9), Respondent states bringing confidential records into a residence is not a violation.

12. The Executive Director considered evidence of Petitioner's past behavior in light of the factors set out in 22 TEX. ADMIN. CODE §213.27 and determined that Petitioner currently demonstrates the criteria required for licensure.
13. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Petitioner's disclosures.
14. 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.
15. 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. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. On or about October 22, 2018, Petitioner submitted the Petition requesting a determination of eligibility for licensure in compliance with Section 301.257, Texas Occupations Code, and the Board's Rules at 22 TEX. ADMIN. CODE §221.4(a).
3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.11(1)(A),(1)(B),(1)(E)&(1)(J) and 22 TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(1)(C),(4)&(6)(D).
4. Petitioner's history reflects conduct which may constitute grounds for discipline and denial of a license under Section 301.452(b)(10)&(13), Texas Occupations Code.

5. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.
6. The Board may license an individual upon evaluation of the factors in 22 TEX. ADMIN. CODE §213.27, and pursuant to 22 TEX. ADMIN. CODE §213.33, if the Board is satisfied that the individual is able to consistently conform her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
7. 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).
8. 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.

TERMS OF ORDER

I. ELIGIBILITY FOR LICENSURE AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED that PETITIONER SHALL receive the sanction of **WARNING WITH STIPUATIONS AND A FINE** and the PETITION for licensure as an Advanced Practice Registered Nurse and Prescriptive Authority is hereby **GRANTED**, and upon payment of any required fees and meeting all other applicable requirements, PETITIONER SHALL be issued the applicable license to practice as an Advanced Practice Registered Nurse (APRN) in the State of Texas in accordance with the terms of this Order, and:

- A. Until successfully completed, any and all licenses issued to Petitioner shall be subject to the terms of this Order.
- B. Until successfully completed, this Order SHALL be applicable to PETITIONER'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. As a result of this Order, PETITIONER'S license to practice as a Registered Nurse in the State of Texas will be designated "single state" and PETITIONER may not work outside the State of Texas in another nurse licensure compact party state.

II. COMPLIANCE WITH LAW

While under the terms of this Order, PETITIONER agrees to comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Agreed Order.

III. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, PETITIONER SHALL successfully complete the following remedial education course(s) within one (1) year of the effective date of this Order, unless otherwise specifically indicated:

- A. 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 and video programs will not be approved.
- B. The course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.
- C. The course "Patient Privacy," a 5.4 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.
- D. The course "Professional Boundaries in Nursing," a 3.0 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/these course(s), PETITIONER 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. PETITIONER 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. MONETARY FINE

PETITIONER SHALL pay a monetary fine in the amount of two hundred fifty dollars (\$250.00) within forty-five (45) days of the effective date of this Order.

Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

V. EMPLOYMENT REQUIREMENTS PRIOR TO APRN LICENSURE

In order to complete the terms of this Order, PETITIONER must work as a Registered Nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for four (4) quarterly periods [one (1) year] of employment as a Registered Nurse or until PETITIONER becomes licensed and employed as an Advanced Practice Registered Nurse, whichever occurs first. Periods of unemployment or of employment that do not require the use of a Registered Nurse (RN) will not apply to this period and will not count towards completion of this requirement.

A. Notifying Present and Future Employers: PETITIONER SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, PETITIONER SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.

B. Notification of Employment Forms: PETITIONER SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.

- C. **Indirect Supervision:** PETITIONER SHALL be supervised by a Registered 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 of 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.
- D. **Nursing Performance Evaluations:** 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 individual who supervises the PETITIONER and these reports shall be submitted by the supervising individual to the office of the Board at the end of each three (3) month quarterly period for four (4) quarters [one (1) year] of employment as a nurse or until PETITIONER becomes licensed and employed as an Advanced Practice Registered Nurse, whichever occurs first.

VI. EMPLOYMENT REQUIREMENTS AFTER APRN LICENSURE, IF ANY

Upon becoming licensed and employed as an Advanced Practice Registered Nurse, in order to complete the terms of this Order, if any, PETITIONER must work as an advanced practice registered nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for the remainder of four (4) quarterly periods [one (1) year] of employment, if any. This requirement will not be satisfied until a total of four (4) quarterly periods of employment as either a registered nurse and/or as an advanced practice registered nurse under the terms of this Order have elapsed. Periods of unemployment or of employment that do not require the use of an advanced practice registered nurse (APRN) license will not apply to this period and will not count towards completion of this requirement. Further, upon becoming licensed and employed as an advanced practice registered nurse, PETITIONER may not

work as a registered nurse (RN) or a vocational nurse (LVN) license, as applicable, while under the terms of this Order.

- A. **Notifying Present and Future Employers, Practice Sites and Credentialing Agencies:** PETITIONER SHALL notify each present employer, practice site and/or credentialing agency 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, practice site and/or credentialing agency in nursing within five (5) days of receipt of this Order. While under the terms of this Order, PETITIONER SHALL notify all future employers, practice sites and/or credentialing agencies in nursing and present a complete copy of this Order, including all attachments, if any, to each future employer, practice site and/or credentialing agency in nursing prior to accepting an offer of employment and/or assignment.

- B. **Notification of Employment Forms:** PETITIONER SHALL CAUSE each present employer, practice site and/or credentialing agency in nursing to submit the Board's "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, practice site and/or credentialing agency in nursing to submit the Board's "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.

- C. **Monitored Practice:** For the remainder of the stipulation/probation period, if any, PETITIONER'S advanced practice registered nursing must be monitored by a Physician or an Advanced Practice Registered Nurse in the same advanced role and population focus area as PETITIONER who has been approved by the Board. PETITIONER MUST, within ten (10) days of entry of this Order or within (10) days of employment as an advanced practice registered nurse, provide to the Board a list of three (3) Advanced Practice Registered Nurses and/or three (3) Physicians from which the Board shall select an approved monitor. For each Advanced Practice Registered Nurse and Physician, the list must include name, license number or social security number, educational background and professional employment history. Monitoring shall commence no later than thirty (30) days following the date of PETITIONER'S receipt of the name of the approved monitor selected by the Board. The monitor will offer guidance, advice and assistance to the PETITIONER as necessary to ensure that deficiencies such as those set forth in this Order do not reoccur. PETITIONER SHALL meet with the monitor at least twice a month, at least one (1) hour duration each. Meetings may be longer and more frequent if the monitor determines necessary. Multiple employers are prohibited.

D. Nursing Performance Reports: PETITIONER SHALL CAUSE each supervising/monitoring Advanced Practice Registered Nurse or Physician 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 Advanced Practice Registered Nurse or Physician who supervises/monitors the PETITIONER and these reports shall be submitted by the supervising/monitoring Advanced Practice Registered Nurse or Physician to the office of the Board at the end of each three (3) month quarterly period for the remainder of four (4) quarters [one (1) year] of employment as a nurse, if any.

VII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Agreed Order , all encumbrances will be removed from PETITIONER'S license(s) and/or privilege(s) to practice nursing in the State of Texas and, subject to meeting all existing eligibility requirements in Texas Occupations Code Chapter 304, Article III, PETITIONER may be eligible for nurse licensure compact privileges, if any.

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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/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, 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 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) and/or 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 notice, administrative hearing, and judicial review of this Order and request that the Texas Board of Nursing ratify this Order.

Signed this 20th day of April, 2020.

Sherril Kirschbaum
SHERRI ANN KIRSCHBAUM, PETITIONER

Sworn to and subscribed before me this 20th day of April, 2020

SEAL

Teresa Bednar

Notary Public in and for the State of Texas

Approved as to form and substance.

A. Clay Graham
A. Clay Graham, Attorney for Petitioner

Signed this 23rd day of April, 2020.



WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 20th day of April, 2020, by SHERRI ANN KIRSCHBAUM, Registered Nurse License Number 775881, Vocational Nurse License Number 202243 & PETITIONER for Eligibility for Licensure, and said Agreed Order is final.

Effective this 23rd day of July, 2020.



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