



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.  
*Heather Hunziker*  
Executive Director of the Board

**DOCKET NUMBER 507-20-4645**

**IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 919578,  
ISSUED TO  
KELLY ELIZABETH AMES**

**§ BEFORE THE STATE OFFICE  
§  
§ OF  
§  
§ ADMINISTRATIVE HEARINGS**

**OPINION AND ORDER OF THE BOARD**

**TO: KELLY ELIZABETH AMES  
200 HILLSIDE COURT  
FORNEY, TX 75126**

**HEATHER HUNZIKER  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on April 22-23, 2021, the Texas Board of Nursing (Board) considered the following items: (1) Order No. 2, *Order of Default Dismissal*, 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 February 25, 2021, 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 February 25, 2021, 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. 2, *Order of Default Dismissal*, 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 and conclusions of law contained in the Formal Charges, which have been deemed admitted, and 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 919578, previously issued to KELLY ELIZABETH AMES, 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 22<sup>nd</sup> day of April, 2021.

TEXAS BOARD OF NURSING



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

Attachment: Formal Charges

**In the Matter of  
Permanent Registered Nurse  
License Number 919578  
Issued to KELLY ELIZABETH AMES,  
Respondent**

§  
§ **BEFORE THE TEXAS**  
§  
§ **BOARD OF NURSING**  
§

### **FORMAL CHARGES**

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KELLY ELIZABETH AMES, is a Registered Nurse holding license number 919578 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 May 18, 2020, Respondent became noncompliant with the Agreed Eligibility Order issued to her by the Texas Board of Nursing on December 5, 2016. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) Participation Agreement in that she submitted a specimen for a drug screen which resulted positive for Phosphatidylethanol (PEth), a metabolite of alcohol. Stipulation III (D) of the Agreed Eligibility Order dated December 5, 2016, reads, in pertinent part:

"PETITIONER SHALL comply with all requirements of the TPAPN participation agreement during its term..."

On or about May 29, 2020, TPAPN closed Respondent's case and referred her to the Texas Board of Nursing. A copy of the Findings of Fact, Conclusions of Law and Agreed Eligibility Order dated December 5, 2016, 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)(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) and/or privilege(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.

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 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](http://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](http://www.bon.texas.gov).

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(s) of the Board dated December 5, 2016.

Filed this 16th day of July, 2020.

TEXAS BOARD OF NURSING



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

Jena Abel, Deputy General Counsel  
Board Certified - Administrative Law  
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Attachment(s): Order(s) of the Board dated December 5, 2016.

D(2020.07.14)



- 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.)"*

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

- A. On or about November 25, 1996, Petitioner was arrested by the Fairfax Police Department, Fairfax, Virginia, for LARCENY, a felony offense.

On or about January 6, 1997, Petitioner was convicted of LARCENY, a misdemeanor offense, in the General District Court, Fairfax County, Virginia.

- B. On or about September 5, 2006, Petitioner was convicted of DWI, 1ST, a Class 1 misdemeanor offense committed on July 28, 2006, in the General District Court, Prince William, Virginia, under Cause No. GT06043659-00. As a result of the conviction, Petitioner was sentenced to confinement for a period of twelve (12) months; however, imposition of the sentence of confinement was suspended, and Petitioner was placed on probation for a period of twelve (12) months, and ordered to pay a fine and court costs.

- C. On or about July 27, 2012, Petitioner entered a plea of Guilty and was convicted of DUI-ALCOHOL-1ST OFFENSE, a misdemeanor offense committed on June 3, 2010, in the Justice Court, Las Vegas Township, Clark County, Nevada, under Case No. 09M51086X. As a result of the conviction, Petitioner was placed on probation for a period of six (6) months, and ordered to pay a fine. On November 5, 2014, the Case was Closed - Requirements Completed.

5. There is no evidence of any subsequent criminal conduct.

6. On September 16, 2016, Petitioner was seen by Emily Fallis, Ph.D., of Balance, Forensic & General Psychological Services, Inc., Fort Worth, Texas, for a chemical dependency evaluation. Dr. Fallis states that Petitioner's history suggests she may have had and still has a substance problem. Petitioner presented an unknown risk of engaging in behaviors which

the Board of nursing identified as constituting unprofessional conduct. It is Dr. Fallis's professional opinion that abusing substances as part of her duties as a nurse is an unknown risk as well. Petitioner presented an unknown risk to behave at odds with the requirements of Rules 213.27 to 213.029 at 22 Texas Administrative Code, as well as the minimum standards set by the Board's Rules 217.11 at 22 TAC and generally accepted nursing standards.

7. 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.
8. Petitioner has sworn that, with the exception of matters disclosed in connection with the Petition, her past behavior conforms to the Board's professional character requirements at 22 TEX. ADMIN. CODE §213.27.
9. 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.
10. 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.
11. The Executive Director considered evidence of Petitioner's substance use disorder, and subsequent rehabilitation as provided in 22 TEX. ADMIN. CODE §213.29 and in accordance with 22 TEX. ADMIN. CODE §213.33.
12. Petitioner's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.
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. The Board has jurisdiction over this matter pursuant to Sections 301.452 and 301.453, Texas Occupations Code.
2. On or about December 9, 2015, Petitioner submitted the Petition 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)(10)&(12), 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 who has a history of substance use disorder after consideration of the criteria set out in 22 TEX. ADMIN. CODE §213.29 if the Board determines the individual does not pose a direct threat to the health and safety of patients or the public.
7. 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 her conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
8. 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.
9. 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).

## TERMS OF ORDER

### **I. ELIGIBILITY FOR LICENSURE**

IT IS THEREFORE AGREED and ORDERED that the application/petition of PETITIONER is hereby **GRANTED**, and 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.

- A. 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.
- B. Upon payment of any required fees and upon attaining a passing grade on the applicable National Council Licensure Examination(s), PETITIONER shall be issued the applicable license(s) to practice nursing in the State of Texas.

### **II. COMPLIANCE WITH LAW AND APPLICABILITY**

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 Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Order.

- A. Until successfully completed, any and all licenses issued to Petitioner shall be subject to the terms of this Order.
- B. 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 will be designated "single state" and PETITIONER 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 PETITIONER wishes to work.

### III. PEER ASSISTANCE PROGRAM REQUIREMENTS

IT IS THEREFORE 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):

- A. Within forty-five (45) days of licensure, PETITIONER SHALL apply to TPAPN;
- B. Within ninety (90) days of licensure, PETITIONER 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, PETITIONER SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing;
- D. PETITIONER 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. PETITIONER SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

### IV. 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 licensure:

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), 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](http://www.bon.texas.gov/compliance).*

**V. EFFECT OF NONCOMPLIANCE**

SHOULD PETITIONER 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 PETITIONER'S license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

Upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER'S license(s) to practice nursing in the State of Texas and 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 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 (I) through Six (VI) 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 TEMPORARY 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 by counsel, notice, administrative hearing, and judicial review of this Order and request that the Texas Board of Nursing ratify this Order.

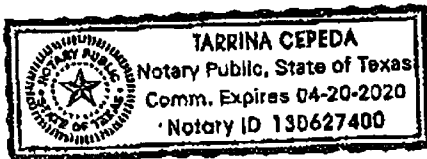
Signed this 1<sup>st</sup> day of December, 2016.

Kelly Elizabeth Ames  
KELLY ELIZABETH AMES, PETITIONER

Sworn to and subscribed before me this 1 day of December, 2016.

SEAL

Tarrina Cepeda  
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 accept and enter the Agreed Eligibility Order that was signed on the 1st day of December, 2016, by KELLY ELIZABETH AMES, PETITIONER for Eligibility for Licensure, and said Order is final.

Effective this 5th day of December, 2016.



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