

In the Matter of
Permanent Vocational Nurse
License Number 112044
Issued to WESLEY KARL WILBURN,
Respondent

§ BEFORE THE TEXAS
§ BOARD OF NURSING
§ ELIGIBILITY AND
§ DISCIPLINARY COMMITTEE

ORDER OF THE BOARD

TO: Wesley Wilburn
8306 Pine Meadow
Converse, TX 78109

During open meeting held in Austin, Texas, on August 10, 2021, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the 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 [22 TEX. ADMIN. CODE § 213.16(j)]. 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.

NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse License Number 112044, previously issued to WESLEY KARL WILBURN to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

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

Entered this 10th day of August, 2021

TEXAS BOARD OF NURSING

BY:



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charges filed April 29, 2021

d17r(2021.07.15)

Re: Permanent Vocational Nurse License Number 112044
Issued to WESLEY KARL WILBURN
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2021, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested.
Copy Via USPS First Class Mail

Wesley Wilburn
8306 Pine Meadow
Converse, TX 78109

BY: _____



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

| | | |
|--------------------------------|---|------------------|
| In the Matter of | § | BEFORE THE TEXAS |
| Permanent Vocational Nurse | § | |
| License Number 112044 | § | |
| Issued to WESLEY KARL WILBURN, | § | BOARD OF NURSING |
| Respondent | § | |

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, WESLEY KARL WILBURN, is a Vocational Nurse holding license number 112044 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 February 9, 2021, while employed as a Licensed Vocational Nurse with Advanced Rehab and Healthcare of Live Oak, Live Oak, Texas, Respondent became noncompliant with the Agreed Order issued to him by the Texas Board of Nursing on January 21, 2021. Noncompliance is the result of Respondent's failure to notify his then present employer, Advanced Rehab and Healthcare of Live Oak, Live Oak, Texas, of the Order of the Board and the stipulations on his license. Respondent failed to comply with Section V, Stipulation A, of the Agreed Order, dated January 21, 2021, which states, in pertinent part:

"... RESPONDENT 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. ..."

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), and is a violation 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE II.

On or about February 9, 2021, while employed as a Licensed Vocational Nurse with Advanced Rehab and Healthcare of Live Oak, Live Oak, Texas, Respondent became noncompliant with the Agreed Order issued to him by the Texas Board of Nursing on January 21, 2021. Noncompliance is the result of his failure to cause his then present employer, Advanced Rehab and Healthcare of Live Oak, Live Oak, Texas, to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of the order. Respondent failed to comply with Section V, Stipulation B, of the Agreed Order, dated January 21, 2021, which states, in pertinent part:

"... RESPONDENT 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. ..."

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(11)(B).

CHARGE III.

On or about February 24, 2021, while employed as a Licensed Vocational Nurse with Advanced Rehab and Healthcare of Live Oak, Live Oak, Texas, Respondent misappropriated a blister pack containing eleven (11) tablets of Tramadol and a Patient Narcotic Record belonging to the facility and Resident LJ. More specifically, Respondent removed the two items from a medication cart and informed an oncoming nurse that he was going to submit the two items to the Director of Nursing, but he never submitted them to the director. Respondent's conduct was likely to defraud the facility and Resident LJ of the cost of the medication.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(4),(6)(G),(8),(10)(E)&(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.

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(s) of the Board dated January 21, 2021.

Filed this 29th day of April, 2021.

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
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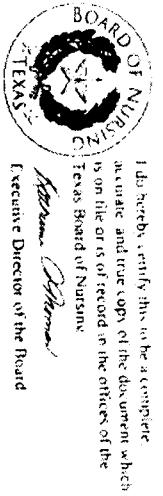
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Attachment(s): Order(s) of the Board dated January 21, 2021.

D(2021.04.20)



BEFORE THE TEXAS BOARD OF NURSING

In the Matter of
Vocational Nurse License Number 112044
issued to WESLEY KARL WILBURN

§
§
§
§

AGREED ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of WESLEY KARL WILBURN, Vocational Nurse License Number 112044, 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)&(13), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Agreed Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on October 16, 2020.

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 Agreed Order.
3. Respondent's license to practice as a vocational nurse in the State of Texas is in current status.
4. Respondent received a Certificate in Vocational Nursing from Blinn College at Bryan, Bryan, Texas, on August 16, 1985. Respondent was licensed to practice vocational nursing in the State of Texas on December 4, 1985.
5. Respondent's nursing employment history includes:

1/1986 – 12/2009

Unknown

Respondent's nursing employment history continued:

| | | |
|-------------------|---------|---|
| 1/2010 – 4/2013 | LVN | Pecan Valley Rehabilitation and Healthcare Center San Antonio, Texas |
| 4/2013 – 9/2016 | LVN | Alamo Heights Health and Rehabilitation San Antonio, Texas |
| 10/2016 – 11/2016 | Unknown | |
| 12/2016 – 7/2018 | LVN | Southeast Nursing and Rehabilitation Center San Antonio, Texas |
| 8/2018 – 1/2020 | LVN | Meridian Care at Grayson Square San Antonio, Texas |
| 2/2020 - Present | Unknown | |

6. At the time of the incident, Respondent was employed as a Licensed Vocational Nurse with Meridian Care at Grayson Square, San Antonio, Texas, and had been in that position for one (1) year and five (5) months.
7. On or about January 1, 2020, while employed as a Licensed Vocational Nurse with Meridian Care at Grayson Square, San Antonio, Texas, Respondent removed a Hydrocodone-Acetaminophen Controlled Drug Record Count Sheet pertaining to Resident AM from the narcotic count book without notifying staff and replaced it with a handwritten narcotic drug sheet that contained inaccurate information. The original narcotic drug sheet indicated one hundred twenty (120) tablets were delivered by Legends Pharmacy II on December 27, 2019, but the handwritten narcotic sheet created by Respondent indicated the resident only had eighty (80) tablets delivered. Further, Respondent documented in the handwritten sheet that he was the only nurse to have administered medication to the resident, when, in fact, the Progress Notes and Treatment Administration Records indicated that other nurses administered medication to the resident as well. Respondent's conduct was likely to injure the resident, in that subsequent care givers would rely on his documentation to further medicate the resident, which could result in an overdose. Additionally, Respondent's conduct left medications unaccounted for, was likely to deceive the hospital pharmacy, and placed the facility in violation of Chapter 481 (Controlled Substances Act) of the Texas Health and Safety Code.
8. In response to Finding of Fact Number Seven (7), Respondent states a resident spilled liquid on the narcotic book and it wet the first two narcotic sheets. He attempted to clean

the sheets as best as he could but they were too saturated to continue to use for documentation purposes. Respondent removed the two (2) sheets and placed them on a desk located in the nurses' station and covered them with paper towels. Respondent proceeded to hand write two (2) controlled sheets to replicate the information that was on the two sheets that were wet. One of the controlled sheets was for Resident AM and the quantity of the medication remaining on the hand written sheet was the same as the sheet that had gotten wet. The two wet sheets remained on the desk located by the nurses' station when Respondent completed his shift and left the facility as there was no managerial staff to turn in the sheets to.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(B)&(1)(D) and 217.12(1)(A),(1)(B),(1)(C),(4),(10)(B)&(11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(10)&(13), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 112044, heretofore issued to WESLEY KARL WILBURN.
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.

TERMS OF ORDER

1. SANCTION AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED that RESPONDENT SHALL receive the sanction of **WARNING WITH STIPULATIONS** in accordance with the terms of this Order.

- A. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.

- B. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" as applicable and RESPONDENT may not work outside the State of Texas in another nurse licensure compact party state using a Texas compact license.

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

III. UNDERSTANDING BOARD ORDERS

Within thirty (30) days of entry of this Order, RESPONDENT must successfully complete the Board's online course, "Understanding Board Orders", which can be accessed on the Board's website from the "Discipline & Complaints" drop-down menu or directly at: <http://www.bon.texas.gov/UnderstandingBoardOrders/index.asp>. Upon successful completion, RESPONDENT must submit the course verification at the conclusion of the course, which automatically transmits the verification to the Board.

IV. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education course(s) within one (1) year of the 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. **A Board-approved course in nursing documentation** that shall be a minimum of six (6) hours in length. The course's content shall include: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. Home study courses and video programs will not be approved.
- C. **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.

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.*

V. **EMPLOYMENT REQUIREMENTS**

In order to complete the terms of this Order, RESPONDENT must work as a 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. This requirement will not be satisfied until four (4) quarterly periods of employment as a nurse have elapsed. Periods of unemployment or of employment that do not require the use of a registered nurse (RN) or a vocational nurse (LVN) license, as appropriate, will not apply to this period and will not count towards completion of this requirement.

- A. **Notifying Present and Future Employers:** RESPONDENT 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, RESPONDENT 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:** RESPONDENT 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. RESPONDENT 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:** RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, 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 RESPONDENT is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- D. **Nursing Performance Evaluations:** RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the RESPONDENT by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the individual who supervises the RESPONDENT 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.

VI. **SUBSEQUENT CRIMINAL PROCEEDINGS**

IT IS FURTHER AGREED, should the RESPONDENT'S conduct, as outlined in the findings of fact of this Agreed Order, result in subsequent judicial action, including a deferred disposition, RESPONDENT may be subject to further disciplinary action, up to,

and including, revocation of RESPONDENT'S license(s) to practice nursing in the State of Texas.

VII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Agreed Order, all encumbrances will be removed from RESPONDENT'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, RESPONDENT may be eligible for nurse licensure compact privileges, if any.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this Order, and any conditions of said Order, to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Texas Board of Nursing and a copy of this Order will be mailed to me once the Order becomes effective. 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 possible revocation of my license(s) and/or privileges to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 10 day of December, 2020.

Wesley Karl Wilburn
WESLEY KARL WILBURN, RESPONDENT

Sworn to and subscribed before me this _____ day of _____, 20____.

SEAL

Notary Public in and for the State of _____

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 10th day of December, 2020, by WESLEY KARL WILBURN, Vocational Nurse License Number 112044, and said Agreed Order is final.

Effective this 21st day of January, 2021.



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