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 the document which is on file or is of record in the offices of the
 Texas Board of Nursing.
 Kristin K. Beaton, DNP, RN
 Executive Director
 Texas Board of Nursing

DOCKET NUMBER 507-23-24078

**IN THE MATTER OF
 PERMANENT VOCATIONAL NURSE
 LICENSE NUMBER 350476,
 ISSUED TO
 DYLON TERRY SMITH**

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

OPINION AND ORDER OF THE BOARD

**TO: DYLON TERRY SMITH
 5316 KARA DR.
 AUSTIN, TX 78744**

**SARAH STARNES
 ADMINISTRATIVE LAW JUDGE
 PO BOX 13025
 AUSTIN, TX 78711-3025**

At the regularly scheduled public meeting on January 25, 2024, the Texas Board of Nursing (Board) considered the following items: (1) the *Default Dismissal Order*, issued by the Administrative Law Judge (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 September 13, 2023, 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, Staff introduced evidence into the record demonstrating that Respondent had been sent a Notice of Hearing by first class and 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 the *Default Dismissal Order*, granting Staff's Motion for Default and dismissing the case from the docket of the State Office of Administrative Hearings (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 the *Default Dismissal Order*, 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 LVN 350476, previously issued to DYLAN TERRY SMITH, to practice nursing in the State of Texas be, and the same are 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 25th day of January, 2024.

TEXAS BOARD OF NURSING



KRISTIN K. BENTON, DNP, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Formal Charges

**In the Matter of
Permanent Vocational Nurse
License Number 350476
Issued to DYLON TERRY SMITH,
Respondent**

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

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DYLON TERRY SMITH, is a Vocational Nurse holding license number 350476, 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, 2023, Respondent became non-compliant with the Board Order issued to you on February 21, 2023. Non-compliance is the result of his failure to comply with Stipulations Number One (1) A of the Order dated February 21, 2021, which states is part:

I. A. within forty-five (45) days following the effective date of this Order, Respondent shall apply to TPAPN.

Respondent declined participation with TPAPN and stated he wished to give up his nursing license. Respondent's case with TPAPN was closed and referred to the Board.

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.

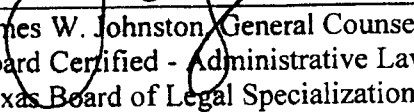
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.texas.gov.

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.

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 February 21, 2023.

Filed this 24 day of July, 2023.

TEXAS BOARD OF NURSING



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

JoAnna Starr, Assistant General Counsel
State Bar No. 24098463

Jacqueline A. Strashun, Assistant General Counsel
State Bar No. 19358600

John Vanderford, Assistant General Counsel
State Bar No. 24086670

1801 Congress Avenue, Suite 10-200
Austin, Texas 78701
P: (512) 305-8657
F: (512) 305-8101 or (512) 305-7401

Attachment(s): Order(s) of the Board dated February 21, 2023.

D(2023.06.23)

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of	§	CONFIDENTIAL
Vocational Nurse License Number 350476	§	AGREED ORDER
issued to DYLON TERRY SMITH	§	FOR
	§	PEER ASSISTANCE

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of DYLON TERRY SMITH, Vocational Nurse License Number 350476, 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),(12)&(13)(effective through 8/31/21), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Confidential Agreed Order for Peer Assistance approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on November 3, 2022.

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 Confidential Agreed Order for Peer Assistance.
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 Northeast Texas Community College, Mt Pleasant, Texas, on August 16, 2019. Respondent was licensed to practice vocational nursing in the State of Texas on September 17, 2019.

5. Respondent's nursing employment history includes:

9/2019 – 4/2020	Vocational Nurse	Truman W. Smith Mt. Pleasant, Texas
5/2020	Unknown	
6/2020 – 7/2020	Vocational Nurse	Medix Agency Mt. Pleasant
7/2020 – 4/2021	Vocational Nurse	Lindale Healthcare Center Lindale, Texas
5/2021 – Present	Unknown	

6. At the time of the initial incident, Respondent was employed as a Vocational Nurse with Lindale Healthcare Center, Lindale, Texas, and had been in that position for nine (9) months.
7. On or about April 30, 2021, while employed as a Vocational Nurse with Lindale Healthcare Center, Lindale, Texas, Respondent lacked fitness to practice vocational nursing in that he was observed to have a stumbling gait, slurred speech and was observed to have a bleeding cut on his face. Additionally, he admitted to consuming alcohol during his shift and blacking out at one point. Respondent's conduct could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
8. On or about June 17, 2021, while licensed as a Vocational Nurse in the State of Texas, Respondent lacked fitness to practice vocational nursing in that he produced a specimen for a drug screen requested by the Texas Peer Assistance Program for Nurses (TPAPN), that resulted positive for Oxazepam, Temazepam, and Marijuana. The use of Oxazepam, Temazepam, and Marijuana, by a Vocational Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.
9. Formal Charges were filed on January 6, 2022.
10. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.11(1)(A),(1)(B)&(1)(T) and 22 TEX. ADMIN. CODE §217.12(1)(B),(4),(5),(10)(A),(10)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(10),(12)&(13)(*effective through 8/31/21*), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 350476, heretofore issued to DYLAN TERRY SMITH.
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.
6. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

TERMS OF ORDER

I. PEER ASSISTANCE PROGRAM REQUIREMENTS

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

- A. Within forty-five (45) days following the effective date of this Order, RESPONDENT SHALL apply to TPAPN.
- B. Within ninety (90) days following the effective date of this Order, RESPONDENT SHALL sign and execute the TPAPN participation agreement and complete the enrollment process, which SHALL include payment of a non-refundable participation fee payable to TPAPN in the amount of five hundred dollars (\$500.00), if licensed as a registered nurse, or in the amount of three hundred fifty dollars (\$350.00), if licensed as a vocational nurse.

- C. Upon acceptance into the TPAPN, RESPONDENT SHALL **waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.**
- D. RESPONDENT SHALL **comply with all requirements of the TPAPN participation agreement** during its term and SHALL keep all applicable license(s) to practice nursing in the State of Texas in current status.
- E. RESPONDENT SHALL CAUSE the TPAPN to **notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.**
- F. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.
- G. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- H. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- I. 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 Confidential Agreed Order for Peer Assistance.

III. REMEDIAL EDUCATION COURSE(S)

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

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.

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. CONFIDENTIALITY REQUIREMENTS

While RESPONDENT remains in compliance with the terms of this Order, this Order shall remain confidential in accordance with the authority outlined in Section 301.466(d), Texas Occupations Code. However, should RESPONDENT fail to successfully complete the terms of this Order or should RESPONDENT commit a subsequent violation of the Nursing Practice Act or Board Rules, this Order shall be treated as prior disciplinary action and will become public information.

VI. EFFECT OF NONCOMPLIANCE

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

VII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Confidential Agreed Order for Peer Assistance, 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, the undersigned, have been notified by legal counsel prior to signing this Order. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. I do acknowledge possessing a license. The license is eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the entry of this Order and all conditions of said Order, including participation in the program through peer assistance and to avoid further disciplinary action in the future. I was given judicial review of this Order. I understand that this Order became effective upon acceptance by the Executive Director (on behalf of the Texas Board of Nursing) and a copy will be mailed to me. I understand that if I fail to comply with all terms and conditions of this Order, I will be subject to investigation and disciplinary sanction, including temporary suspension of my license pursuant to Section 301.4551, Texas Occupations Code, and/or suspension of my license, denial of my license, or revocation of privileges to practice nursing in the State of Texas, as provided in the Order. I do hereby certify that I have read and understand the above.

Signed by: Michelle day of February, 2023

Michelle
ON BEHALF OF THE RESPONDENT

Sworn to and subscribed before me this 21st day of February, 2023

Notary Public in and for the State of

Texas, do hereby certify the above is true and substance.

Deborah Caudal
Deborah Caudal, Attorney for Respondent

Signed by: 21st day of February, 2023

WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing does hereby ratify and adopt the Confidential Agreed Order for Peer Assistance that was signed on the 16th day of February, 2023, by DYLAN TERRY SMITH, Vocational Nurse License Number 350476, and said Confidential Agreed Order for Peer Assistance is final.

Effective this 21st day of February, 2023.



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