



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.
Kristin K. Benton, DNP, RN
Executive Director
Texas Board of Nursing

DOCKET NUMBER 507-24-13950

**IN THE MATTER OF
PERMANENT VOCATIONAL NURSE
LICENSE NUMBER 321505
ISSUED TO MARY NOELLE STOKES**

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

OPINION AND ORDER OF THE BOARD

TO: MARY STOKES
1126 E 8TH
TYLER, TEXAS 75701

DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

At the regularly scheduled public meeting on July 18, 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 May 3, 2024, 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 May 3, 2024, 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 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 Vocational Nurse License Number 321505, previously issued to MARY NOELLE STOKES, 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 18th day of July, 2024.

TEXAS BOARD OF NURSING

Kristin K. Benton, DNP, RN

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

Attachment: Formal Charges

**In the Matter of
Permanent Vocational Nurse
License Number 321505
Issued to MARY NOELLE STOKES,
Respondent**

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

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MARY NOELLE STOKES, is a Vocational Nurse holding license number 321505, 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 December 7, 2023, December 11, 2023, December 19, 2023 and December 27, 2023, Respondent violated the Agreed Board Order issued on October 19, 2023. Stipulation Number Seven (7) Section A of the October 19, 2023 Agreed Board Order states, in pertinent part:

“RESPONDENT SHALL abstain from the use of alcohol, nalbuphine, propofol and all controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose...”.

Specifically, Respondent's December 7, 2023 drug screen tested positive for Ethyl Glucuronide at 562 ng/ml and Ethyl Sulfate at 267 ng/ml. Respondent's December 11, 2023 drug screen tested positive for Ethyl Glucuronide at 784 ng/ml and Ethyl Sulfate at 476 ng/ml. Respondent's December 19, 2023 drug screen tested positive for Ethyl Glucuronide at 107279 ng/ml and Ethyl Sulfate at 32313 ng/ml. Respondent's December 27, 2023 drug screen tested positive for Ethyl Glucuronide at 22083 ng/ml and Ethyl Sulfate at 6288 ng/ml.

The above action constitutes grounds for disciplinary action in accordance with Sections 301.452(b)(1),(b)(9)&(b)(10), Texas Occupations Code, and is a violation of TEX. ADMIN. CODE §217.12(4)(5)&(10)(A).

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.

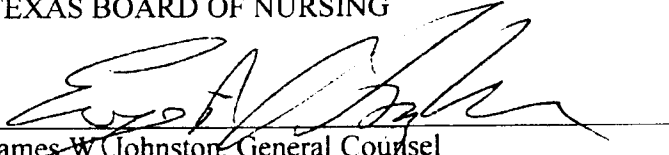
NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on adopted policies related to Substance Use Disorders and Other Alcohol and Drug Related Conduct, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

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 June 16, 2020, August 2, 2022, and October 19, 2023.

Filed this 18 day of March, 2024.

TEXAS BOARD OF NURSING



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

John Vanderford, Deputy General Counsel
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Attachment(s): Order(s) of the Board dated June 16, 2020, August 2, 2022, and October 19, 2023.

D(2024.01.09)



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.
Kristin K. Barton, DNP, RN
 Kristin K. Barton, DNP, RN
 Executive Director
 Texas Board of Nursing

DOCKET NUMBER 507-23-14783

**IN THE MATTER OF
 PERMANENT CERTIFICATE
 NUMBER 321505,
 ISSUED TO
 MARY NOELLE TERRELL a/k/a
 MARY NOELLE STOKES**

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

OPINION AND ORDER OF THE BOARD

**TO: MARY NOELLE TERRELL a/k/a
 MARY NOELLE STOKES
 1126 E. 8th
 TYLER, TX 75702**

**HEATHER D. HUNZIKER
 ADMINISTRATIVE LAW JUDGE
 PO BOX 13025
 AUSTIN, TX 78711-3025**

At the regularly scheduled public meeting on October 19, 2023, the Texas Board of Nursing (Board) considered the following items: the Proposal for Decision (PFD) regarding the above cited matter; Staff's recommendation to the Board regarding the PFD and order; and Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by any party.

The Board, after review and due consideration of the PFD; Staff's recommendations; and the recommendations made by the Respondent, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Pursuant to Tex. Occ. Code. §301.459 (a-1), an Administrative Law Judge may make a recommendation regarding an appropriate action or sanction. The Board, however, has the sole authority and discretion to determine the appropriate action or sanction.

The ALJ found, and the Board agrees, that the Respondent's conduct warrants a second tier, sanction level II sanction for her violations of §301.452(b)(1) and (b)(10).¹

Licensure suspension, either enforced or probated, or licensure revocation is authorized for a second tier, sanction level II sanction for a violation of §301.452(b)(1) or (10). Based on the findings of the ALJ, the Board agrees with the ALJ that a probated suspension for a period of three years is appropriate for these violations.²

As found by the ALJ, the Board has given the Respondent several opportunities through prior agreed orders to demonstrate her fitness to practice, despite allegations of engaging in the use of methamphetamines and amphetamines and despite violating her 2022 Agreed Order.³ The ALJ found additional aggravating factors, including lack of truthfulness or trustworthiness, Respondent's prior discipline for the same conduct, the number of violations (three), the deterrent effect of prior two Board orders; and the involvement of alcohol.⁴ Further, the ALJ did not find any mitigating factors.⁵

Therefore, after carefully reviewing and considering the aggravating and mitigating factors identified by the ALJ in this case, the Board has determined, pursuant to the Board's Disciplinary Matrix and the Board's rules, including 22 Tex. Admin. Code §213.33(e)(6), that an three-year probated suspension is the most appropriate sanction in this case.

Consistent with the ALJ's recommendation, the Board finds that the Respondent's license should be issued a probated suspension for a period of three years of probationary stipulations. The Board finds that the Respondent should be required to complete a nursing jurisprudence and ethics course and a critical thinking course.⁶ The Board also agrees with the ALJ that the Respondent's nursing practice should be supervised during the probationary period. The Board finds that one year of direct supervision followed by indirect supervision for the duration of the Order should sufficiently ensure the Respondent's safe practice. Supervisory stipulations are intended to prevent additional violations from occurring by ensuring that any deficiencies in the Respondent's practice will be discovered quickly and remediated appropriately. Further, one year of direct supervision followed by two years of indirect supervision is consistent with the Board's precedent in cases involving a multi-year disciplinary order. The Board also finds that the Respondent should be required to inform her employers of this Order and to submit quarterly employer reports to the Board so the Board can monitor the Respondent's progress and completion of the Order. The Board further finds that abstention and drug testing requirements should be imposed. These stipulations are consistent with the stipulations contained in the previous Agreed Board Orders that the Respondent failed to satisfy and are authorized by 22 Tex. Admin. Code §213.33(e)(6)⁷.

¹ See pages 10-11 of the PFD.

² See *id.*

³ See *id.* at page 11.

⁴ See *id.* and adopted Conclusion of Law Number 8.

⁵ See *id.* and adopted Conclusion of Law Number 9.

⁶ 22 Tex. Admin. Code §213.33(f) requires every order issued by the Board to include participation in a program of education, which at a minimum, shall include a review course in nursing jurisprudence and ethics.

⁷ 22 Tex. Admin. Code §213.33(e)(6), which authorizes suspension of licensure, probated or enforced, and reasonable probationary stipulations that may include remedial education courses and practice for at least two years.

I. SANCTION AND APPLICABILITY

IT IS THEREFORE ORDERED, subject to ratification by the Texas Board of Nursing, that Vocational Nurse License Number 321505, previously issued to MARY NOELLE TERRELL, to practice nursing in the State of Texas is/are hereby **SUSPENDED** and said suspension is **STAYED** and RESPONDENT is hereby placed on **PROBATION** for a minimum of three (3) years **AND** until RESPONDENT fulfills the additional requirements 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. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- D. 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 Order.

III. SUPERSEDING ORDER

IT IS FURTHER ORDERED that the sanction and conditions of this Order SHALL supersede all previous stipulations required by any Order entered by the Texas Board of Nursing.

under the direction of a nurse designated by the Board, as well as limitations on nursing activities/practice settings and abstention and drug testing

IV. 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.

V. 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. **The course "Righting a Wrong,"** a 3.0 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) International Center for Regulatory Scholarship (ICRS).

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.*

VI. 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 twelve (12) quarterly periods [three (3) years] of employment. This requirement will not be satisfied until twelve (12) 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. **Direct Supervision:** For the first year [four (4) quarters] of employment as a Nurse under this order, RESPONDENT SHALL be directly 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. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on 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. **Indirect Supervision:** For the remainder of the stipulation/probation period, 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.

- E. **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 twelve (12) quarters [three (3) years] of employment as a nurse.

VII. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. While under the terms of this Order, RESPONDENT SHALL **abstain from the use of alcohol, nalbuphine, propofol and all controlled substances**, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that the prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.
- B. While working as a nurse under the terms of this Order, RESPONDENT SHALL **submit to random periodic screens for alcohol, nalbuphine, propofol and all controlled substances**. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when RESPONDENT obtains employment and submits the Notification of Employment form to the Board.
- For the first three (3) month [1st quarter] period RESPONDENT works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
 - For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.

- For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.
- For the remainder of the probation period, if any, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE initially conducted through urinalysis, and subsequent testing or required re-tests, when applicable, may be obtained through blood, hair/nail, and/or breathalyzer, as directed by the Board's drug and alcohol testing program. Any test result for a period of time in which the RESPONDENT is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for any or all of the following substances and/or their metabolites:

Amphetamine	Methamphetamine	MDMA
MDA	Alprazolam	Diazepam
Alpha-o-alprazolam	Alpha-Hydroxytriazolam	Clonazepam
Desmethyldiazepam	Lorazepam	Midazolam
Oxazepam	Temazepam	Amobarbital
Butabarbital	Butalbital	Pentobarbital
Phenobarbital	Secobarbital	Codeine
Hydrocodone	Hydromorphone	Methadone
Morphine	Opiates	Oxycodone
Oxymorphone	Propoxyphene	Cannabinoids
Cocaine	Phencyclidine	Ethanol
Heroin	Fentanyl	Tramadol
Meperidine	Carisoprodol	Butorphanol
Nalbuphine	Ketamine	Propofol

Upon enrollment in the Board's drug and alcohol testing program, **RESPONDENT SHALL, on a daily basis, call or login online to the Board's designated drug and alcohol testing vendor to determine whether or not RESPONDENT has been selected to produce a specimen for screening that day** and SHALL, if selected, produce a specimen for screening that same day at an approved testing location and/or comply with any additional instructions from the vendor or Board staff. Further, **a Board representative may appear** at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which RESPONDENT does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject RESPONDENT to 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. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

VIII. SUBSEQUENT CRIMINAL PROCEEDINGS

IT IS FURTHER ORDERED, should the RESPONDENT'S conduct, as outlined in the findings of fact of this 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.

IX. CONSEQUENCES OF CONTINUED NONCOMPLIANCE

Continued noncompliance with the unfulfilled requirements of this or any Order previously issued by the Texas Board of Nursing, as applicable, may result in further investigation and subsequent disciplinary action, including denial of licensure renewal or revocation of RESPONDENT'S license(s) and/or privileges to practice nursing in the State of Texas.

X. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against RESPONDENT'S license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

XI. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this 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.

Entered this 19th day of October, 2023.

TEXAS BOARD OF NURSING

Kristin K. Benton, DNP, RN

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

Attachment: Proposal for Decision; 507-23-14783 (July 26, 2023)

FILED
507-23-14783
7/26/2023 9:37 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

ACCEPTED
507-23-14783
7/26/2023 9:39:55 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 26, 2023

John Vanderford
Texas Board of Nursing

VIA EFILE TEXAS

Mary N. Terrell

VIA EFILE TEXAS

**RE: Docket No. 507-23-14783.TBN; TEXAS BOARD OF NURSING v.
MARY NOELLE TERRELL**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS BOARD OF NURSING,
PETITIONER**

v.

**MARY NOELLE TERRELL,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to impose disciplinary action against the licensed vocational nurse (LVN) credential held by Mary Noelle Stokes, née Mary Noelle Terrell,¹ (Respondent), alleging that she failed to comply with the terms of a Board order requiring her to abstain from the use of alcohol and controlled substances. The Administrative Law Judge (ALJ) concludes Staff met its burden to prove its allegations by a preponderance of the

¹ Petitioner Mary Noelle Terrell stated that she had changed her name to Mary Noelle Stokes.

evidence and recommends the Board impose a three-year, probated suspension of Respondent's license, with certain other requirements, as sought by Staff.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Matters of notice and jurisdiction were undisputed and are therefore set out in the Findings of Fact and Conclusions of Law without further discussion.

State Office of Administrative Hearings (SOAH) ALJ Heather D. Hunziker convened the hearing on the merits via Zoom videoconference on June 8, 2023; and the record closed after the admitted exhibits were filed that same day. Assistant General Counsel John Vanderford represented Staff. Respondent appeared and represented herself.

II. APPLICABLE LAW

The Texas Nursing Practice Act (Act), chapter 301 of the Texas Occupations Code (Code), authorizes the Board to take disciplinary action against a nurse who has violated an order of the Board.² Disciplinary action may also be taken for “unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.”³ By rule, the Board has determined that violating a Board order constitutes unprofessional conduct.⁴

² Code § 301.452(b)(1).

³ Code § 301.452(b)(10).

⁴ 22 Tex. Admin. Code § 217.12(11)(B). For ease of reference, the Board's rules, found in title 22, part 11, chapters 211 to 228 of the Texas Administrative Code, shall be referred to as “Board Rule ____.”

When a nurse violates the Act or related rules, the Board is required to impose a disciplinary sanction by taking one or more of the following actions, with or without probationary stipulations: issuing a written warning; administering a public reprimand; limiting or restricting the person's license; suspending or revoking the license; or assessing a fine.⁵ In addition to, or instead of, the aforementioned disciplinary actions, the Board may require the licensee to: submit to care, counseling, or treatment by a health provider designated by the Board; participate in a program of education or counseling prescribed by the Board, including a program of remedial education; practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; perform public service the board considers appropriate; or abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.⁶ The Board may probate any penalty imposed on a nurse.⁷

The Board has a Disciplinary Matrix that the Board and SOAH are required to use in all disciplinary matters.⁸ The Disciplinary Matrix categorizes violations into tiers, and into sanction levels within tiers, based on the seriousness of the offense and risk of harm to patients or the public. The Disciplinary Matrix also lists aggravating and mitigating factors that must be considered by the Board and SOAH. Board Rule 213.33(c) includes another list of factors that must be considered in

⁵ Code § 301.453(a)(2)-(7); Board Rule 213.33(e).

⁶ Code § 301.453(b).

⁷ Code § 301.453(c).

⁸ Board Rule 213.33(a), (b).

determining the appropriate disciplinary sanction, including the following factors relevant to this case:

- (1) evidence of actual or potential harm to patients or the public;
- (2) evidence of lack of truthfulness or trustworthiness;
- (4) evidence of practice history;
- (5) evidence of present fitness to practice;
- (6) previous disciplinary history;
- (7) the length of time the person has practiced;
- (8) the actual damages resulting from the violation;
- (9) the deterrent effect of the penalty;
- (10) attempts by the licensee to correct or stop the violation;
- (11) any mitigating or aggravating circumstances;
- (13) whether the person is being disciplined for multiple violations of the Act or the Board's order;
- (16) evidence of good professional character; and
- (18) any other matter that justice may require.⁹

Staff had the burden of proving its allegations by a preponderance of the evidence, and Respondent had the burden of proving mitigating factors, if any.¹⁰

⁹ Board Rule 213.33(c).

¹⁰ 1 Tex. Admin. Code § 155.427.

III. EVIDENCE

The ALJ admitted twelve exhibits offered by Staff, without objections.¹¹ Additionally, Staff presented the testimony of Mitch LeBard, a forensic toxicologist, and called Respondent as a witness. Respondent did not offer any exhibits; however, she testified on her own behalf and called Edgar Hernandez as a character witness.

A. BACKGROUND

On September 2, 2014, the Board issued LVN License No. 321505 to Respondent.

On June 16, 2020, Respondent entered into an Agreed Order (2020 Agreed Order) with the Board that found, among other findings of fact, that Respondent engaged in the use of methamphetamines and amphetamines.¹² As a result, the 2020 Agreed Order required Respondent to, among other things, successfully complete the Texas Peer Assistance Program for Nurses (TPAPN).¹³

On August 2, 2022, Respondent entered into an Agreed Order (2022 Agreed Order) with the Board that found, among other findings of fact, that Respondent tested positive twice in 2021 for metabolites or lipids of alcohol and was dismissed

¹¹ Staff's exhibits consisted of: the Board's computer licensure record for Respondent (Staff Ex. 1); an investigatory letter dated November 16, 2022 (Staff Ex. 2); Staff's Notice of Hearing and three Amended Notices of Hearing (Staff Exs. 4-4c); lab test records for Respondent's October 31, 2022 sample (Staff Ex. 6); lab test records for Respondent's March 14, 2023 sample (Staff Ex. 7); the Board's Agreed Order dated August 2, 2022 (Staff Ex. 8); and lab test records for Respondent's April 26, 2023 sample (Staff Ex. 9).

¹² Staff Ex. 8 at 12.

¹³ Staff Ex. 8 at 13.

from TPAPN.¹⁴ As a result, the 2022 Agreed Order required Respondent to, among other things, abstain from the use of alcohol and all controlled substances, and submit to random periodic screens for these substances for at least one year.¹⁵ The Agreed Order provides that a positive result without a valid prescription or a refusal to submit to a drug or alcohol screen may result in further disciplinary action, including temporary suspension or revocation of Respondent's license.¹⁶

On October 31, 2022, March 14, 2023, and April 26, 2023, Respondent tested positive for ethyl glucuronide (EtG) and ethyl sulfate (EtS), which are metabolites of alcohol.¹⁷

B. EVIDENCE

1. Testimony of Mitch LeBard

Mr. LeBard is a toxicologist and Associate Director of Forensic Toxicology at MedTox Laboratories, Inc. (MedTox), and is their certifying scientist. He is a toxicology expert.¹⁸ He testified about the chain of custody for Respondent's urine

¹⁴ Staff Ex. 8 at 2.

¹⁵ Staff Ex. 8 at 5-6.

¹⁶ Staff Ex. 8 at 7.

¹⁷ Staff Ex. 6 at 6; Staff Ex. 7 at 6; Staff Ex. 9 at 6. The Board charges included allegations related to an additional positive test on October 25, 2022. Staff Ex. 4a at 6. However, at the hearing, Staff stipulated to not pursuing that claim; therefore, the Board's charge and claim related to October 25, 2022, will not be discussed further in this Proposal for Decision.

¹⁸ Mr. LeBard's curriculum vitae is contained in Staff Exhibit 6 at 243-45.

samples; the methods MedTox used to test the samples for specific substances, including alcohol; and the test results.

Mr. LeBard testified that Respondent tested positive and well above the screening threshold levels for two metabolites of alcohol—ethyl glucuronide (EtG) and ethyl sulfate (EtS)—in three different samples from three different days: October 31, 2022, March 14, 2023, April 26, 2023.¹⁹ He stated that EtG and EtS are metabolites generated when an individual is exposed to or drinks ethyl alcohol, detectable up to 84 hours after the alcohol was consumed. He said that 100-500 ng/mL of EtG can reasonably show up with incidental alcohol exposure, like through using mouthwash, and chronic incidental exposure could produce 500-1000 ng/mL; but over 1000 ng/mL indicates active alcohol consumption consistent with drinking beer, wine, and/or liquor on the sampling day or the day prior. He concluded that above 1000 ng/mL would not be incidental exposure.

He observed that Respondent's April 26, 2023 EtG level was 119 times the amount of incidental exposure and all her samples indicated active consumption of alcohol. Mr. LeBard added that these results were validated with secondary testing and exceeded the levels that might have resulted from incidental contact with alcohol-based hand sanitizer or mouthwash. He ruled out the likelihood of innocent exposure based on the levels identified. Based on the test results, Mr. LeBard

¹⁹ Respondent's October 31, 2022 sample held 5,876 nanograms per milliliter (ng/ml) of EtG and 2,840 ng/ml of EtS; her March 14, 2023 sample held 39,410 ng/ml EtG and 11,925 ng/ml EtS; and her April 26, 2023 sample held 119,262 ng/ml EtG and 27,537 ng/ml EtS. Staff Ex. 6 at 6; Staff Ex. 7 at 8; and Staff Ex. 9 at 8.

concluded that Respondent had consumed alcoholic beverages prior to her urine being sampled.

2. Testimony of Respondent

By way of background, Respondent explained that she was dating someone who was “addicted to meth;” she tried it with him; she tested positive for it at work; and, so, she entered the TPAPN program. She said she participated for three years and completed the drug and alcohol rehabilitation, alcohol classes, and psychology evaluations; and had a letter submitted by Claire Medford²⁰ upon completion, stating that she did not need anything further. She said that she had learned from her mistake and would never do that again because it jeopardized her livelihood.

Respondent denied drinking alcohol while in TPAPN and while under Board orders. She testified that she avoids alcohol-containing products, even reading labels on everything to make sure it contains no alcohol, and using non-alcoholic hand sanitizer. She said that her positive tests must have resulted from her dental work some months before, during which she swished with mouthwash that made her test positive. She also stated that she had had surgery and been in the hospital, where she could have been exposed to alcohol, in October to November 2022.

Respondent testified that she has been working at all times under the Board order, except when she was in the hospital and recovering through February 2023. She stated that this Board enforcement “was all for a mistake” she made by taking a

²⁰ This person was not further identified.

drug; she has never had a DUI or had missing or diverted drugs during her career; she loves what she does; and she realizes she made a mistake. Finally, she said she “should not be on probation or anything”; she has already taken the courses Staff asked that she be ordered to complete; she has fulfilled the work performance requirements; and her employer knows about the Board orders.

3. Testimony of Edgar Hernandez

Mr. Hernandez is a Wound Care Nurse who has worked with Respondent at three different nursing homes since 2019. He testified that he is her supervisor. He said nursing home residents have never complained about Respondent, but always said she is a good nurse. Mr. Hernandez said she is never late for work, does not miss days, and is a great employee. He said Respondent is a great nurse and a “benefit to whoever has her as their employee.” He stated that he has never seen Respondent impaired in any way; she is always very professional; and she is always there in a crisis. Lastly, Mr. Hernandez stated that no medication has ever come up missing during their time together.

IV. ANALYSIS

Staff established by a preponderance of the evidence that Respondent failed to comply with the terms of the 2022 Agreed Order. The record shows that Respondent tested positive three times (that is, October 31, 2022, March 14, 2023, and April 26, 2023) for metabolites of alcohol, a prohibited substance under the terms of the 2022 Agreed Order. The 2022 Agreed Order requires Respondent to

abstain entirely from the listed substances while under the terms of the order.²¹ Respondent's testimony that she did not consume alcohol was not credible because, as explained by the toxicology expert, her three urine samples indicated active consumption of alcohol, with alcohol metabolites many times the amounts (respectively, more than five times, 39 times, and 119 times the amount) that would reflect incidental exposure.

Staff alleged Respondent is subject to discipline under Code § 301.452(b)(1) for failure to comply with an order of the Board. In addition, Staff asserted discipline could be imposed under Code § 301.452(b)(10) for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public, because Board Rule 217.12(11)(B) defines unprofessional conduct to include violation of a Board order.

The ALJ finds a second tier, sanction level II disciplinary action is appropriate under either Code § 301.452(b)(1) or (10). The first tier for both Code sections addresses an "isolated failure" of compliance, but Respondent failed to comply with the requirements of the 2022 Agreed Order on multiple occasions. The third tier for both provisions is for conduct that results in serious harm to a patient or the public, which was not shown here. The second tier, which encompasses failure to comply with a substantive requirement in a prior Board order or a substantive Board rule—as in Board Rule 217.12(11)(B)—is the correct classification. Under the second tier for Code § 301.452(b)(1) or (10), sanction level II is appropriate because of the

²¹ Staff Ex. 8 at 5.

aggravating factors—including multiple violations, prior discipline for the same conduct, and involvement of alcohol.

The Board gave Respondent several opportunities, through the 2020 Agreed Order and the 2022 Agreed Order, to demonstrate her fitness to practice despite allegations of engaging in the use of methamphetamines and amphetamines, and despite violating the 2020 Agreed Order. Nevertheless, Respondent violated the 2022 Agreed Order multiple times by doing the same thing she for which she was dismissed from TPAPN—ingesting alcohol.

Looking at the factors to be considered under Board Rule 213.33(c): Respondent does not admit to drinking, which indicates a lack of truthfulness or trustworthiness; the previous two, more lenient, orders apparently lacked a deterrent effect; and Respondent violated the 2022 Agreed Order on multiple (three) occasions. These factors justify a more severe sanction. On the other hand, as for Respondent's present fitness to practice and professional character, Mr. Hernandez testified that she is a great nurse and very professional. While Respondent testified that she attempted to avoid alcohol, addressing the factor of "attempts by the licensee to correct or stop the violation," as previously discussed, this testimony was not credible given the positive test results and Mr. LeBard's testimony to the contrary. There is no evidence of the other factors.

The ALJ recommends a probated suspension of Respondent's license for three years, requiring direct supervision by another nurse for the first year and indirect supervision for the following two years. Other stipulations would be similar

to those included in the 2022 Agreed Order, such as requirements to: notify present and future employers of the Board's order; have employers notify the Board of all employment changes; have employers provide quarterly reports to the Board; abstain from use of alcohol and controlled substances; and submit to periodic drug screens to test compliance. Also, Respondent should be mandated to take classes in nursing jurisprudence and ethics, critical thinking, and such other topics as the Board deems beneficial.

V. FINDINGS OF FACT

1. On September 2, 2014, the Texas Board of Nursing (Board) issued Licensed Vocational Nurse License No. 321505 to Mary Noelle Terrell (Respondent).
2. Mary Noelle Terrell changed her name to Mary Noelle Stokes.
3. On June 16, 2020, Respondent entered into an Agreed Order (2020 Agreed Order) with the Board that found that Respondent engaged in the use of methamphetamines and amphetamines.
4. The 2020 Agreed Order required Respondent to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN).
5. On August 2, 2022, Respondent entered into an Agreed Order (2022 Agreed Order) with the Board that found that Respondent tested positive twice in 2021 for metabolites or lipids of alcohol, and found that Respondent did not complete TPAPN.
6. The 2022 Agreed Order required Respondent for a year or more to, among other things, abstain from the use of alcohol and controlled substances, and submit to random periodic screens for these substances.
7. The 2022 Agreed Order provides that a positive result without a valid prescription may result in further disciplinary action, including temporary suspension or revocation of Respondent's license.

8. On October 31, 2022, March 14, 2023, and April 26, 2023, Respondent submitted urine samples that tested positive for ethyl glucuronide (EtG) and ethyl sulfate, which are metabolites of alcohol.
9. Respondent's April 26, 2023 EtG level was 119 times the amount of incidental exposure; and her three samples were many times the amount of incidental exposure and indicated active consumption of alcohol.
10. Respondent's positive drug screens indicate that Respondent consumed alcohol on each of the sampling days or the day prior to giving each of the urine samples.
11. Respondent does not admit to drinking, which indicates a lack of truthfulness or trustworthiness.
12. The 2020 Agreed Order and the 2022 Agreed Order lacked deterrent effect.
13. Respondent effected multiple violations of the 2022 Agreed Order.
14. Respondent is fit to practice, with a professional character.
15. On May 19, 2023, staff (Staff) of the Board issued an Amended Notice of Hearing. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
16. State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Heather D. Hunziker convened the hearing on the merits via Zoom videoconference on June 8, 2023; and the record closed after the admitted exhibits were filed that same day. Assistant General Counsel John Vanderford represented Staff. Respondent appeared and represented herself.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code ch. 301.

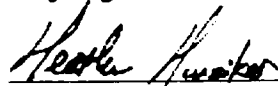
2. SOAH has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.
3. Respondent received adequate and proper notice of the hearing on the merits. Tex. Occ. Code § 301.454; Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proof by a preponderance of the evidence, and Respondent had the burden of establishing any mitigating factors. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction pursuant to Texas Occupations Code section 301.452(b)(1) because she failed to comply with an order of the Board. The failure to comply with a Board order constitutes unprofessional conduct and subjects Respondent to sanction pursuant to Texas Occupations Code section 301.452(b)(10) and the Board's rule found at 22 Texas Administrative Code section 217.12(11)(B).
6. The Board may impose a disciplinary sanction, which can range from remedial education to revocation of a nurse's license and can be probated. Tex. Occ. Code § 301.453; 22 Tex. Admin. Code § 213.33(e).
7. To determine the appropriate disciplinary sanction to be imposed in this case, the Board must consider the factors set forth in 22 Texas Administrative Code section 213.33(c) and the Board's Disciplinary Matrix, 22 Texas Administrative Code section 213.33(b).
8. The Board may consider as aggravating factors: Respondent's lack of truthfulness or trustworthiness; Respondent's prior discipline for the same conduct; the number of violations (three); the deterrent effect of prior two Board orders; and the involvement of alcohol. 22 Tex. Admin. Code § 213.33(b), (c)(2), (6), (9), (11), (13).
9. Respondent did not establish any mitigating factors to be considered by the Board. 22 Tex. Admin. Code § 213.33(b)-(c).

VII. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board impose a three-year, probated suspension on Respondent's license, requiring direct supervision by another nurse for the first year and indirect supervision for the following two years. The ALJ recommends that the Board's order include stipulations such as requirements to: notify present and future employers of the Board's order; have employers notify the Board of all employment changes; have employers provide quarterly reports to the Board; abstain from use of alcohol and controlled substances, and submit to periodic drug screens to test compliance; and take classes in nursing jurisprudence and ethics, critical thinking, and such other topics as the Board deems beneficial.

Signed July 26, 2023.

ALJ Signature:



Heather D. Hunziker

Presiding Administrative Law Judge

ACCEPTED
507-23-14783
8/11/2023 10 30 12 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza CLERK

FILED
507-23-14783
8/11/2023 10 29 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 11, 2023

John Vanderford
Texas Board of Nursing

VIA EFILE TEXAS

Mary N. Terrell

VIA EFILE TEXAS

RE: Docket Number 507-23-14783.TBN; *TEXAS BOARD OF NURSING v. MARY NOELLE TERRELL*

Dear Parties:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced hearing has expired and neither party filed exceptions. *See* 1 Tex. Admin. Code § 155.507(b). Therefore, the Administrative Law Judge recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the **Texas Board of Nursing**. *See* Tex. Gov't Code § 2003.051(a).

CC: Service List



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
Vocational Nurse License Number 321505 §
issued to MARY NOELLE TERRELL §
§

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MARY NOELLE TERRELL, Vocational Nurse License Number 321505, 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)(1) & (10), 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 June 28, 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 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 Tyler Junior College, Tyler, Texas, on August 1, 2014. Respondent was licensed to practice vocational nursing in the State of Texas on September 2, 2014.
5. On or about June 16, 2020, Respondent was required to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN) through an Order of the Board. A copy of the June 16, 2020, Order is attached and incorporated herein by reference as part of this Agreed Order.

6. On or about September 14, 2021, produced a urine specimen for a random drug screen that resulted positive for Ethyl Glucuronide (EtG) and Ethyl Sulfate (EtS), which are metabolites of Alcohol (ethanol). On or about September 27, 2021, Respondent produced a blood specimen that resulted positive for Phosphatidyl Ethanol (PEth), which is a lipid formed in the presence of Alcohol (ethanol). On or about October 15, 2021, Respondent was dismissed from TPAPN and referred back to the Board.
7. In response to Finding of Fact Number Six (6), Respondent states that she was prescribed by her dentist Chlorhexidine Gluconate and it contained 11.6% alcohol. Respondent stated she had been using the mouthwash daily to help with dental issues and that could have been the reason for the positive tests.
8. Respondent provided a positive letter of reference from a supervisor.
9. Formal Charges were filed on January 11, 2022.

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 22 TEX. ADMIN. CODE §217.12(11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(1) & (10), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 321505, heretofore issued to MARY NOELLE TERRELL.
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

I. 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. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- D. 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. SUPERSEDING ORDER

IT IS FURTHER AGREED and ORDERED that the sanction and conditions of this Agreed Order SHALL supersede all previous stipulations required by any Order entered by the Texas Board of Nursing.

IV. 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.

V. **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. The course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) International Center for Regulatory Scholarship (ICRS).

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.*

VI. **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.

VII. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. While under the terms of this Order, RESPONDENT SHALL abstain from the use of alcohol, nalbuphine, propofol and all controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed,

RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that the prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.

B. While working as a nurse under the terms of this Order, RESPONDENT SHALL submit to random periodic screens for alcohol, nalbuphine, propofol and all controlled substances. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when RESPONDENT obtains employment and submits the Notification of Employment form to the Board.

- For the first three (3) month [1st quarter] period RESPONDENT works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
- For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.
- For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.
- For the remainder of the probation period, if any, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE conducted through urinalysis. Any test result for a period of time in which the RESPONDENT is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for any or all of the following substances and/or their metabolites:

Amphetamine	Methamphetamine	MDMA
MDA	Alprazolam	Diazepam
Alpha-o-alprazolam	Alpha-Hydroxytriazolam	Clonazepam
Desmethyldiazepam	Lorazepam	Midazolam
Oxazepam	Temazepam	Amobarbital
Butobarbital	Butalbital	Pentobarbital
Phenobarbital	Secobarbital	Codeine

Hydrocodone	Hydromorphone	Methadone
Morphine	Opiates	Oxycodone
Oxymorphone	Propoxyphene	Cannabinoids
Cocaine	Phencyclidine	Ethanol
Heroin	Fentanyl	Tramadol
Meperidine	Carisoprodol	Butorphanol
Nalbuphine	Ketamine	Propofol

Upon enrollment in the Board's drug and alcohol testing program, **RESPONDENT SHALL, on a daily basis, call or login online to the Board's designated drug and alcohol testing vendor to determine whether or not RESPONDENT has been selected to produce a specimen for screening that day** and SHALL, if selected, produce a specimen for screening that same day at an approved testing location and/or comply with any additional instructions from the vendor or Board staff. Further, **a Board representative may appear** at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which RESPONDENT does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject RESPONDENT to 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. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

VIII. CONSEQUENCES OF CONTINUED NONCOMPLIANCE

Continued noncompliance with the unfulfilled requirements of this or any Order previously issued by the Texas Board of Nursing, as applicable, may result in further investigation and subsequent disciplinary action, including denial of licensure renewal or revocation of RESPONDENT'S license(s) and/or privileges to practice nursing in the State of Texas.

IX. 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 4 day of July, 2022.
Mary Noelle Terrell
MARY NOELLE TERRELL, 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 4th day of July, 2022, by MARY NOELLE TERRELL, Vocational Nurse License Number 321505, and said Agreed Order is final.

Effective this 2nd day of August, 2022.



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

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of § AGREED ORDER
Vocational Nurse License Number 321505 §
issued to MARY NOELLE TERRELL §
§

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MARY NOELLE TERRELL, Vocational Nurse License Number 321505, 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 April 30, 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 Tyler Junior College, Tyler, Texas, on August 1, 2014. Respondent was licensed to practice vocational nursing in the State of Texas on September 2, 2014.
- 5 Respondent's nursing employment history includes

9/2014 – 2/2016

LVN

Reunion Plaza
Tyler, Texas

Respondent's nursing employment history continued.

3/2016 - 6/2018	LVN	Park Place Nursing & Rehabilitation Tyler, Texas
7/2018 - 2/2019	LVN	Briarcliff Health Center Tyler, Texas
3/2019 - Present	LVN	Park Place Nursing & Rehabilitation Tyler, Texas

- 6 At the time of the initial incident, Respondent was employed as a Licensed Vocational Nurse with Park Place Nursing & Rehabilitation, Tyler, Texas, and had been in that position for two (2) years and three (3) months.
- 7 On or about June 4, 2018, while employed with Park Place Nursing & Rehabilitation, Tyler, Texas, Respondent engaged in the intemperate use of Methamphetamines & Amphetamines in that she submitted a specimen for a reasonable suspicion drug screen that resulted positive for Methamphetamines & Amphetamines Possession of Methamphetamines & Amphetamines is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act) The use of Methamphetamines & Amphetamines by a Licensed 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
- 8 On or about February 14, 2019, while employed with Briarcliff Health Center, Tyler, Texas, Respondent failed to assess and/or document an assessment in the medical record of Patient PL after she had fallen Respondent's conduct resulted in an inaccurate medical record and could have caused changes in the patient's condition to go undetected and untreated.
- 9 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)(M) and 22 TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(1)(C),(5), (10)(A),(10)(D)&(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 321505, heretofore issued to MARY NOELLE TERRELL
- 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. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" and Respondent 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, 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. 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.*

IV. 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.

V. 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. 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 entry of this Order and all conditions of said Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes 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 pursuant to Section 301.4551, Texas Occupations Code, and/or possible revocation of my license(s) and/or privileges to practice nursing in the State of Texas, as a consequence of my noncompliance.

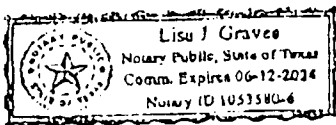
Signed this 12 day of June, 2020.
Mary Noelle Terrell
MARY NOELLE TERRELL, RESPONDENT

Sworn to and subscribed before me this 12 day of June, 2020.

Lisa J. Graves

Notary Public in and for the State of Texas

SEAL



WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 12th day of June, 2020, by MARY NOELLE TERRELL, Vocational Nurse License Number 321505, and said Agreed Order is final

Effective this 16th day of June, 2020



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