



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.  
*Melanie C. Thomas*  
Executive Director of the Board

## BEFORE THE TEXAS BOARD OF NURSING

\*\*\*\*\*

In the Matter of Texas Registered	§	
Nurse License Number 696997	§	REINSTATEMENT
Issued to <b>MARK A. TURNER</b>	§	AGREED ORDER

On November 13, 2007, the Texas Board of Nursing, hereinafter referred to as the "Board," considered the request for reinstatement of Texas Registered Nurse License Number 696997, held by MARK A. TURNER, hereinafter referred to as PETITIONER, together with any documents submitted by PETITIONER.

A public meeting was held on November 13, 2007, by the Eligibility & Disciplinary Committee of the Texas Board of Nursing ("Board") at 333 Guadalupe St., Tower 3, Suite 460, Austin, Texas 78701, in which the PETITIONER's request to reinstate Texas Registered Nurse License Number 696997, was considered.

PETITIONER appeared in person and was represented by John B. Larrimer, Attorney at Law.

Board Members in attendance were Linda R. Rounds, Ph.D, FNP, RN; Rachel Gomez, LVN, and Deborah Bell, CLU, ChFC. Staff present were Katherine A. Thomas, MN, RN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director of Enforcement; Douglas Boone, Investigator; Carolyn Hudson, Investigator; Allison Hassinger, Administrative Assistant; and Cynthia LoCastro, Legal Assistant.

### FINDINGS OF FACT

1. Prior to institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Petitioner waived notice and hearing, and consented to the entry of this Order.

3. Petitioner received an Associate Degree in Nursing from Southwestern Adventist University, Keene, Texas, on August 1, 2000. Petitioner was originally licensed to practice Vocational Nursing on September 14, 2000, which is in "Revoked" status. Petitioner was originally licensed to practice professional nursing in the State of Texas on June 24, 2003.
4. Petitioner's professional nursing employment history includes:

2001 - 2002	Student Nurse	Presbyterian Hospital of Dallas Dallas, Texas
2003 - 2005	Case Manager	Sunrise Home Health Care/Primary Care Garland, Texas
2004 - 2005	Case Manager	Vision Home Health Garland, Texas
2006 - present		Unknown
5. On March 8, 2005, Petitioner's licenses to practice professional and vocational nursing in the State of Texas was revoked by the Board. A copy of the Order of the Board dated March 8, 2005 is attached hereto and incorporated for all purposes.
6. On or about December 7, 2006, Petitioner submitted a Petition for Reinstatement of Registered Nurse License Number 696997 to practice professional nursing in the State of Texas.
7. Petitioner presented the following in support of his petition:
  - 7.1. A letter of recommendation dated October 26, 2006, was received from Lilly Agrawal, Director of Nurses, Vision Home Health Care, Inc.
  - 7.2. A letter of recommendation dated November 27, 2006, was received from Doris Thomas of Dallas, Texas.
  - 7.3. A letter of recommendation dated November 20, 2006, was received from Josephine James of Dallas, Texas.
  - 7.4. A letter of recommendation dated October 31, 2006, was received from Ernestine Roberson of Dallas, Texas.
  - 7.5. A letter of recommendation dated November 22, 2006, was received from Mr. and Mrs. Nelson of Dallas, Texas.

- 7.6. A letter of recommendation dated November 6, 2006, was received from Lula Mae Sattiewhite of Dallas, Texas.
- 7.7. A letter of recommendation dated November 4, 2006, was received from Audrey Black of Irving, Texas.
- 7.8. A letter of recommendation dated November 1, 2006, was received from Dorothe Bagley of Dallas, Texas.
- 7.9. A letter of recommendation dated November 6, 2006, was received from Helen J. Nabors of Dallas, Texas.
- 7.10. A letter of recommendation dated November 2, 2006, was received from Ruby Wofford of Dallas, Texas.
- 7.11. A letter of recommendation was received from Sarah Govender, RN, Director of Patient Services, Sunrise Home Health Services, Rockwall, Texas.
- 7.12. A letter of recommendation was received from Hans Schulz, RN, Director of Programs, Sunrise Home Health Services, Rockwall, Texas.
- 7.13. A letter of recommendation was received from Betty Arnstine, RN, Director of Nursing Services, Lemmon Avenue Surgery Center.
- 7.14. A letter of recommendation was received from Mr. and Mrs. Askew, Owners of Professional Grooming Corner and Trucking, Duncanville, Texas.
- 7.15. A letter of recommendation was received from Dr. Mary H. Ayers, Pembroke Pines, Florida.
- 7.16. A letter of recommendation was received from Ryland D. Dickerson, DeSoto, Texas.
- 7.17. A letter of recommendation was received from Rudy Balderas, Metroplex Mortgage, Dallas, Texas.
- 7.18. A letter of recommendation was received from Katherine M. Barker, DeSoto, Texas.
- 7.19. A letter of recommendation was received from Rev. Donald Harbert, Assistant Pastor, New Light Bible Fellowship Church, DeSoto, Texas.
- 7.20. A letter of recommendation was received from Angela Blair, AB Management & Media Group.

- 7.21. A letter of recommendation was received from Vikki Coleman, Owner/Executive Director, Scribbles Learning Center, Dallas, Texas.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication.
3. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

ORDER

IT IS THEREFORE AGREED that the petition of MARK A. TURNER, Registered Nurse License Number 696997, to practice professional nursing in the State of Texas, be and the same is hereby GRANTED SUBJECT TO THE FOLLOWING CONDITIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.*, and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's multistate licensure privilege, if any, to practice professional nursing in the State of Texas

IT IS FURTHER AGREED and ORDERED that while Petitioner's license is encumbered by this Order, Petitioner may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Petitioner wishes to work.

(1) PETITIONER SHALL pay all re-registration fees and be issued a license to practice professional nursing in the State of Texas, which shall bear the appropriate notation. Said license issued to MARK A. TURNER, shall be subject to the following agreed post-licensure probation conditions:

(2) PETITIONER SHALL, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact 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 Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify PETITIONER's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address:*  
<http://www.bon.state.tx.us/about/stipscourses.html>.

**IT IS FURTHER AGREED, SHOULD PETITIONER CHOOSE TO WORK AS A NURSE IN TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A**

**MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATION PERIOD:**

(3) PETITIONER SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on Petitioner's license. PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the probationary conditions on Petitioner's license. PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(4) PETITIONER SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within ten (10) days of receipt of this Order. PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Petitioner by the Board, to the Board's office within five (5) days of employment as a nurse.

(5) For the first year of employment as a Nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse. Direct supervision requires another professional nurse to be working on the same unit as Petitioner and immediately available to provide assistance and

intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). The Petitioner SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(6) For the remainder of the probationary period, PETITIONER SHALL be supervised by a Registered Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as Petitioner, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Petitioner is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(7) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the Petitioner by the Board, periodic reports as to Petitioner's capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the Petitioner. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for TWO (2) years of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, PETITIONER SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.


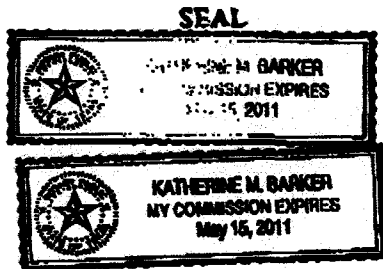
Mark A. Turner

Page 8

**PETITIONER'S CERTIFICATION**

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice professional nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license to practice nursing in the State of Texas will be revoked, as a consequence of any noncompliance.

Signed this 5<sup>th</sup> day of January, 2008.  
MARK A. TURNER, PetitionerSworn to and subscribed before me this 5<sup>th</sup> day of January, 2008.  
Notary Public in and for the State of Texas

Approved as to form and substance.

  
JOHN B. LARIMER, Attorney for PetitionerSigned this 6 day of Jan, 2008



WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing, does hereby ratify and adopt this Agreed Order for Reinstatement that was signed on the 5th day of January, 2008, by **MARK A. TURNER**, PETITIONER for Reinstatement, and said Order is final.

Effective this 28<sup>th</sup> day of February, 2008.



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

**DOCKET NUMBER 507-04-8189**

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
REGISTERED NURSE LICENSE	§	
NUMBER 696997	§	
VOCATIONAL NURSE LICENSE	§	OF
NUMBER 177152	§	
ISSUED TO	§	
MARK A. TURNER	§	ADMINISTRATIVE HEARINGS

**ORDER OF THE BOARD**

TO: MARK A. TURNER  
c/o John D. Nation Nation and  
Andrea Nation, Attorneys at Law  
5630 Yale Blvd  
Dallas, Texas 75206-5035

During open meeting held in Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Registered Nurse License Number 696997, and Vocational Nurse License Number 177152, previously issued to MARK A. TURNER, to practice professional and vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Registered Nurse License Number 696997, and Vocational Nurse License Number 177152, previously issued to MARK A. TURNER, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privilege, if any, to practice professional nursing in the State of Texas.

Entered this 8th day of March, 2005.

BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

BY:



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

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NOS. 696997 AND 177152 ISSUED TO	§	
	§	
MARK A. TURNER	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Board of Nurse Examiners for the State of Texas (Staff/Board) seeks to discipline Mark A. Turner (Respondent) for violating provisions of the Nursing Practice Act (Act), TEX. OCC. CODE ANN. ch. 301, and the Board's rules. Staff alleged Respondent procured his professional nursing license by fraud or deceit by not revealing his prior criminal conduct. Staff further alleged that the criminal acts were unprofessional or dishonorable conduct that could injure a patient or the public. Respondent admitted he pleaded guilty to the criminal charges, but denied he responded to application questions untruthfully. Instead, Respondent contended he misunderstood the questions and the legal ramifications of the criminal conduct. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's vocational and professional nursing licenses be revoked.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On October 28, 2004, ALJ Georgie B. Cunningham convened the hearing in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. General Counsel James W. Johnston represented Staff, and Attorney John D. Nation represented Respondent. Neither party challenged notice or jurisdiction, which will be addressed in the findings of fact and conclusions of law. After evidence was received, the hearing closed on October 28, 2004.

## II. DISCUSSION

### A. Introduction

Respondent did not challenge Staff's charges that he pleaded guilty to two counts of credit card abuse in 1988, theft in 2000, and insurance claim fraud in 2003; however, he adamantly denied using fraud or deceit in securing his license. At the hearing, the Board's Executive Director Katherine A. Thomas, MN, RN, and Respondent testified. Additionally, Staff presented documentary evidence.

Generally, Ms. Thomas addressed the Board's policies regarding the seriousness of such conduct. In turn, Respondent attempted to minimize its seriousness and justify his conduct.

### B. Does Respondent's Criminal Conduct Warrant Disciplinary Action?

Section 301.452(b)(10) of the Act provides that a person is subject to disciplinary action for unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public. It was established that Respondent's criminal history is as follows:

On November 29, 1988, Respondent pleaded guilty to two counts of Credit Card Abuse, a 3<sup>rd</sup> Degree Felony, in the Dallas County, Texas, Criminal District Court No. 5, in Cause Nos. F88-87577-HL and F88-87578-HL. Respondent's adjudication of guilt was deferred, and the court placed him on probation for a period of two years and assessed a fine of \$100.00 and court costs of \$67.50.

On October 18, 2000, Respondent pleaded guilty to Theft greater than or equal to \$500.00 but less than \$1,500.00, in the Dallas County, Texas, Criminal Court No. 4, in Cause No. MA007116-E. Respondent's adjudication of guilt was deferred, and the court placed him on Community Supervision for a period of 24 months, assessed a fine of \$500.00, and ordered him to pay restitution of \$757.75.

On September 3, 2003, Respondent pleaded guilty to Insurance Claim Fraud, 500, a Class A Misdemeanor, in the 283<sup>rd</sup> Judicial District Court of Dallas County, Texas, in Cause No. F02-01844-T. Respondent's adjudication of guilt was deferred, and the court placed him on Community Supervision for a period of two years, assessed a fine of \$750.00 and court costs of \$181.00, and ordered 80 hours of community service restitution.

The ALJ finds that Respondent's criminal acts and his subsequent behavior demonstrate unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public, as set forth in the statutory provision and Board's policy. The underlying conduct itself is more important than whether it resulted in a conviction. As established by Ms. Thomas, many of the patients in a nurse's care are vulnerable due to their illness, mental or physical condition, or age.

Respondent's criminal conduct, spanning a five-year time period, raises trust issues and reflects negatively on his professional character. Although no evidence was presented regarding Respondent's specific patients, he has been employed by a health agency delivering care to patients in their homes. Thus, patients in his care could be at risk. Furthermore, his most recent criminal act, an insurance claim fraud, was committed in 2003. Although Respondent attempted to excuse his criminal behavior by dismissing it alternatively as youthful innocence, mistaken identity, poor communication, and forgetfulness, the ALJ did not find his testimony credible. The pleas and court orders speak for themselves.

Furthermore, Respondent's application for employment as a nurse submitted to Presbyterian Hospital of Dallas in Dallas, Texas, on March 13, 2001, demonstrates an ongoing lack of trustworthiness. Respondent answered, "No," to the following question:

For any offense, other than a minor traffic violation,  
... have you been convicted?  
... pled no contest?  
... been given probation in lieu of sentencing?  
... any pending charges?

Presbyterian Hospital relied on Respondent's answer when it employed him, thus putting their patients at risk. With his negative answer, he concealed his credit card abuse and theft thereby denying the hospital the opportunity to consider that conduct in its employment determination. The ALJ finds it simply unbelievable that Respondent pleaded guilty in the 1988 and 2000 cases, received probation in both, and yet failed to understand the question. Furthermore, Respondent's comment that he had no intent to deceive as the hospital could have checked his criminal records, which had not been expunged, suggested he did understand the question.

In his testimony, Respondent referred to the criminal conduct as something that happened "early" in his career. The ALJ notes, however, that Respondent will be on probation until 2005 for the insurance claim fraud charges arising from an act when he was approximately 34 years of age. As a licensed nurse, Respondent could be a risk to both patients and the public with insurance claim fraud.

Accordingly, the ALJ finds that the credit card abuse, theft, and insurance claim fraud along with the untruthful answer on the employment application demonstrate a lack of trustworthiness and unprofessional conduct. The Board should impose disciplinary action pursuant to Section 301.452(b)(10) of the Act.

**C. Did Respondent Use Fraud or Deceit in Procuring His License?**

Section 301.452(b)(2) of the Act provides that a person is subject to disciplinary action for using fraud or deceit in procuring a license to practice professional nursing or vocational nursing. The evidence showed that on August 5, 2002, Respondent submitted an application to the Board for licensure as a professional nurse. He attested to the truth of the following statement on the Affidavit of Eligibility for Licensure/Certification:

Have never been convicted of or received a deferred order, with or without adjudication of guilt, for any crime other than a minor traffic violation?

While the ALJ notes that the question could have been more explicit, an applicant is advised in writing to consult an attorney or health care provider if he has any questions. The statement contains sufficient key words, such as *convicted*, *deferred order*, *adjudication of guilt*, and *crime other than minor traffic violation* that should cause a reasonable person to seek clarification rather than conclude it is not applicable to his prior criminal conduct.

The ALJ agrees with Ms. Thomas that Respondent's answer deprived the Board the opportunity to evaluate his prior criminal conduct in making its decision about his license. Instead, the Board relied on the truthfulness of his sworn statement. The Board not only adopted rules addressing good professional character, but also set forth a policy statement of why it considers character so important. The ALJ concludes that Respondent's failure to reveal his prior criminal conduct is a significant omission and a sufficient basis for license revocation.

#### **D. Recommendation for Sanction**

After evaluating Respondent's conduct, Ms. Thomas concluded that his intentional falsification of documents showed a lack of professional character. Consequently, she recommended that Respondent's licenses be revoked or voluntarily surrendered. She indicated the same analysis would apply for both licenses, as both kinds of nurses care for patients. She noted that Respondent has lied to his employer, and he has lied to the Board. The Board has adopted a policy statement that falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity.

The ALJ notes that some factors are in Respondent's favor. The Board has taken no prior disciplinary action against him; he has paid his court costs and fines and has complied with his community service orders. While his employment records did not show exemplary conduct, neither did they reveal unsatisfactory conduct. None of his criminal acts involved patients.



Nevertheless, the ALJ concludes that the factors as a whole weigh against Respondent. His actions display a pattern of untruthfulness, untrustworthiness, and a lack of candidness necessary for professional conduct. Accordingly, the ALJ agrees with Staff that the evidence warrants revocation of Respondent's Texas nursing licenses.

### III. PROPOSED FINDINGS OF FACT

1. Mark A. Turner (Respondent), a Registered Nurse, holds license number 696997 issued by the Board of Nurse Examiners for the State of Texas (Board).
2. Respondent also holds license number 177152 to practice vocational nursing in Texas.
3. The Board filed formal charges against Respondent on June 11, 2004.
4. The Board sent the charges to Respondent on June 18, 2004.
5. 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 the opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.
6. On September 17, 2004, the Board sent a hearing notice with a copy of the charges to Respondent by certified mail, return receipt requested, to his attorney of record.
7. The hearing 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 a short, plain statement of the matters asserted.
8. Respondent and his attorney appeared at the hearing on October 28, 2004.
9. On September 6, 1988, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for two counts of Fraud-Illegal Use of a Credit Card, a 3<sup>rd</sup> degree Felony.
10. On November 29, 1988, Respondent pleaded guilty to two counts of Credit Card Abuse, a 3<sup>rd</sup> Degree Felony, in the Dallas County, Texas, Criminal District Court No. 5, in Cause Nos. F88-87577-HL and F88-87578-HL.

11. Respondent's adjudication of guilt was deferred in Cause Nos. F88-87577-HL and F88-87578-HL. The court placed him on probation for a period of two years and assessed a fine of \$100.00 and court costs of \$67.50.
12. On May 1, 2000, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for Theft, greater than or equal to \$500.00 but less than \$1,500.00, a Class A Misdemeanor.
13. On October 18, 2000, Respondent pleaded guilty to Theft greater than or equal to \$500.00 but less than \$1,500.00, in the Dallas County, Texas, Criminal Court No. 4, in Cause No. MA007116-E.
14. Respondent's adjudication of guilt was deferred in Cause No. MA007116-E, and the court placed him on Community Supervision for a period of 24 months, assessed a fine of \$500.00, and ordered him to pay restitution \$757.75.
15. On March 13, 2001, Applicant submitted an application for employment to Presbyterian Hospital of Dallas in Dallas, Texas, in which he answered "no" to the following question:
  - "For any offense, other than a minor traffic violation, have you:
    - ... been convicted?
    - ... pled no contest?
    - ... been given probation in lieu of sentencing?
    - ... any pending charges?"
16. On August 5, 2002, Respondent submitted an application to the Board for licensure as a professional nurse.
17. Respondent attested to the truth of the following statement on the Affidavit of Eligibility for Licensure/Certification:
  - "Have never been convicted of or received a deferred order, with or without adjudication of guilt, for any crime other than a minor traffic violation."
18. On March 27, 2003, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for Insurance Claim Fraud, greater than or equal to \$1,500.00 but less than \$20,000.00, a State Jail Felony.
19. On September 3, 2003, Respondent pleaded guilty to Insurance Claim Fraud, 500, a Class A Misdemeanor, in the 283<sup>rd</sup> Judicial District Court of Dallas County, Texas, in Cause No. F02-01844-T.

20. Respondent's adjudication of guilt was deferred in Cause No. F02-01844-T, and the court placed him on Community Supervision for a period of two years, assessed a fine of \$750.00 and court costs of \$181.00, and ordered 80 hours of community service restitution.
21. Respondent remains on probation until 2005 in Cause No. F02-01844-T.
22. Respondent is employed by a home health agency.
23. Respondent provides nursing care to patients in their homes.
24. Patients in a nurse's care are vulnerable due to their illness, mental or physical condition, or age.

#### IV. PROPOSED CONCLUSIONS OF LAW

1. The Board of Nurse Examiners for the State of Texas (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. subch. J.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and § 301.454 of the Act.
3. Proper and timely notice was effected upon the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001; 22 TEX. ADMIN. CODE (TAC) §§ 213.10 and 213.22; and 1 TAC § 155.55(b).
4. Respondent violated § 301.452(b)(10) of the Act and 22 TAC §§ 217.12(1) and 239.11.
4. Respondent violated § 301.452(b)(2) of the Act and 22 TAC §§ 217.12(22) and 239.11(8).
6. Pursuant to § 301.453 of the Act, the Board should revoke Respondent's license.

SIGNED December 23, 2004.



GEORGIE B. CUNNINGHAM  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS