

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 189328
ISSUED TO
ELIHU CRUZ BORRERO

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



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.
Patricia P. Roman
Executive Director of the Board

ORDER OF THE BOARD

TO: Elihu Cruz Borrero
1822 Vinca Manor
San Antonio, Texas 78260

During open meeting held in Austin, Texas, on March 18, 2008, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case. This case was heard, and based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

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

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

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

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

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing (22 TEX. ADMIN.CODE § 213.2(j)). All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 189328, previously issued to ELIHU CRUZ BORRERO, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 189328, previously issued to ELIHU CRUZ BORRERO, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

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

Entered this 18th day of March, 2008.

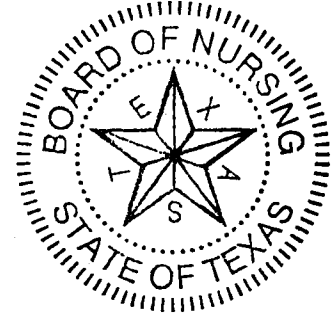
TEXAS BOARD OF NURSING

BY: Kath A. Thomas
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of March, 2008, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

Elihu Cruz Borrero
1822 Vinca Manor
San Antonio, Texas 78260



BY: Katherine A. Thomas
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of Permanent License § **BEFORE THE TEXAS**
Number 189328, Issued to §
ELIHU CRUZ BORRERO, Respondent § **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, ELIHU CRUZ BORRERO, is a Licensed Vocational Nurse holding license number 189328, 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 June 29, 2007, Respondent failed to comply with the Agreed Order issued to him by the Board of Nurse Examiners for the State of Texas on May 14, 2007. Respondent's non-compliance is the result of his failure to comply with Stipulation Number One (1) of the Order which reads, in pertinent part:

- (1) "RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to and be accepted into the TPAPN"

Specifically, Respondent failed to respond to TPAPN deadline letters and did not enroll in the program.

A copy of the Findings of Fact, Conclusions of Law and Agreed Order, dated May 14, 2007 is attached and incorporated, by reference, as part of this pleading.

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

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, TEX. OCC. CODE ANN. The cost of proceedings shall include, but is not limited to, the cost paid by the board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars (\$1200.00).

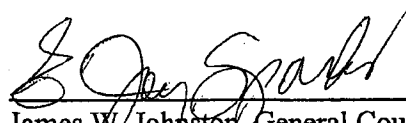
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on Adopted Disciplinary Sanction Policies for Nurses with Chemical Dependency which can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Agreed Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff. Agreed Order dated May 14, 2007.

Filed this 2nd day of January, 2008.

TEXAS BOARD OF NURSING



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

Victoria Cox, Assistant General Counsel
State Bar No. 00789585

E. Joy Sparks, Assistant General Counsel
State Bar No. 18874600

TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Agreed Order dated May 14, 2007

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BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of Vocational Nurse License Number 189328 § AGREED
issued to ELIHU CRUZ BORRERO § ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of ELIHU CRUZ BORRERO, Vocational Nurse License Number 189328, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10)&(12), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on March 7, 2007, by Katherine A. Thomas, MN, RN, Executive Director.

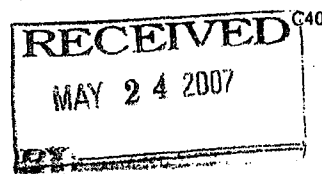
FINDINGS OF FACT

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.
2. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice vocational nursing in the State of Texas.
4. Respondent received a Certificate in Vocational Nursing from the Army Practical Nurse Course, Fort Sam Houston, Texas, on April 18, 2003. Respondent was licensed to practice vocational nursing in the State of Texas on July 3, 2003.
5. Respondent's complete vocational nursing employment history is unknown.
6. At the time of the incidents, Respondent was employed as a Licensed Vocational Nurse with Nursefinders, San Antonio, Texas, and had been in this position for approximately four (4) days.

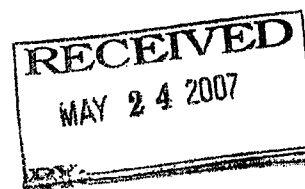
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7. On or about June 2, 2006, while employed as a Licensed Vocational Nurse with Nursefinders, San Antonio, Texas, and assigned at Compass Hospital, San Antonio, Texas, Respondent lacked fitness to practice vocational nursing, in that he stayed in the bathroom for an extended period of time, and when he came out of the bathroom, he looked confused; he did not appear focused; his speech was slurred; his face was flushed; and his eyes were glassy. Additionally, after Respondent sat down and attempted to stand again, he stumbled. Furthermore, Respondent appeared to have dried blood on his left arm and wrist; he appeared to have a needle stick mark on his left antecubital; and he was found to have one-half vial of Ativan in his possession. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in the patient's condition, and could have affected his 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 June 2, 2006, while employed as a Licensed Vocational Nurse with Nursefinders, San Antonio, Texas, and assigned at Compass Hospital, San Antonio, Texas, Respondent misappropriated Ativan from the hospital and patients thereof. Respondent's conduct defrauded the facility and the patients thereof of the cost of the medications and is in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
9. In response to Findings of Fact Numbers Seven (7) and Eight (8), Respondent stated: "With the support of my parents, on July 10, 2006, I enrolled in an in-house drug treatment facility with Teen Challenge. I stayed in the program until December 27, 2006. While in the program, I had the time to reflect on my life and behavior and have come to realize I was not prepared to reintegrate back into society from the Army Reserves and my military service in Iraq so quickly. I realized I needed counseling. I have sought enrollment into the TPAPN and intend on continuing my treatment.
10. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
11. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
12. Formal Charges were filed on February 5, 2007.
13. Formal Charges were mailed to Respondent on February 7, 2007.
14. Respondent's conduct described in Findings of Fact Numbers Seven (7) and Eight (8) resulted from Respondent's impairment by chemicals and mental illness.



15. 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 301.451-301.455, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Section 301.452(b)(10)&(12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(A)&(E),(5)&(6)(G).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 189328, heretofore issued to ELIHU CRUZ BORRERO, including revocation of Respondent's license to practice vocational nursing in the State of Texas.
5. 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.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, 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):

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to and be accepted into the TPAPN, which SHALL include payment of a non-refundable participation fee in the amount of three hundred fifty dollars (\$350) payable to TPAPN.

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(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN contract to the Board of Nurse Examiners.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Board of Nurse Examiners of any violation of the TPAPN contract.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

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

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent 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 Respondent wishes to work.

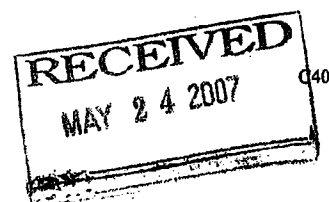
IT IS FURTHER AGREED, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of Respondent's license and multistate licensure privileges, if any, to practice nursing in the State of Texas.

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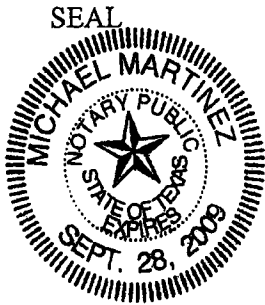
RESPONDENT'S CERTIFICATION

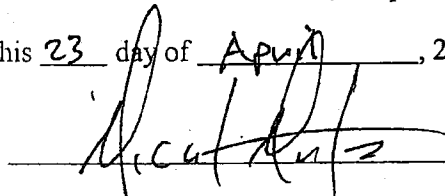
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this 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 Board of Nurse Examiners, 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 revocation of my license to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 23 day of April, 2007.


ELIHU CRUZ BORRERO, Respondent

Sworn to and subscribed before me this 23 day of April, 2007.




Notary Public in and for the State of TEXAS



WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Board of Nurse Examiners for the State of Texas, does hereby accept and enter the Agreed Order that was signed on the 23rd day of April, 2007, by ELIHU CRUZ BORRERO, Vocational Nurse License Number 189328, and said Order is final.

Entered and effective this 14th day of May, 2007.



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

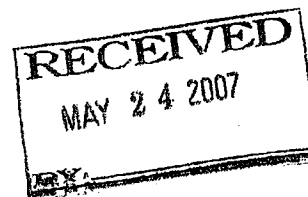
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BY: _____



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