BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Registered Nurse	§	AGREED
License Number 617624	§	
issued to DAVID NEFF	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Bo considered the matter of DAVID NEFF, Registered Nurse License Number 617624, herein referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Article 4525(b)(2)&(9), Tex. Rev. Civ. Stat. (effective September 1, 1993), and Section 301.452(b)(2),(3)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on October 11, 2010, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

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 proceedings, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice professional nursing in the State of Texas.

4. Respondent received an Associate Degree in Nursing from Howard College, Big Springs, Texas on May 1, 1995. Respondent was licensed to practice professional nursing in the State of Texas on June 20, 1995.

5. Respondent's nursing employment history is unknown.

6. On or about July 20, 1993, Respondent was issued an Agreed Eligibility Order by the Board of Nurse Examiners for the State of Texas that required Respondent to participate in 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.
Executive Director of the Board

Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated July 20, 1993, is attached and incorporated, by reference, as part of this Order.

7. On or about March 20, 1995, Respondent submitted an Application for Initial Licensure for Graduates of Schools in the United States to the Board of Nurse Examiners for the State of Texas in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question:

"Have you ever been convicted of a crime other than minor traffic violations?"

Respondent failed to disclose that on or about May 5, 1987, Respondent was arrested and subsequently convicted of PUBLIC INTOXICATION in Howard County, Texas As a result of the conviction, Respondent was ordered to pay a fine.

Respondent failed to disclose that on or about March 16, 1989, Respondent was convicted of RECKLESS DRIVING (a misdemeanor offense committed on December 18, 1988), in the County Court of Midland County, Texas, under Cause No. 48,708. As a result of the conviction, Respondent was ordered to pay a fine and court costs.

Respondent also failed to disclose that on or about April 29, 1994, Respondent was convicted of RECKLESS DRIVING, A VIOLATION OF THE TEXAS UNIFORM DRIVING ACT (a misdemeanor offense committed on December 18, 1988), in the County Court of Midland County, Texas, under Cause No. 52,705. As a result of the conviction, Respondent was ordered to pay a fine and court costs.

8. In response to Finding of Fact Number Seven (7), Respondent states when he submitted his application, he disclosed his background in the declaratory order, underwent a psychiatric evaluation and disclosed he had been sober since June 26, 1992 and was attending AA meetings. He states all of the information was reviewed by the TBN and was allowed to sit for the boards if he participated in TPAPN. Respondent states he agreed to participate for one (1) year and completed his agreement satisfactorily.

9. On or about November 30, 2004, Respondent was arrested by the Texas Highway Patrol, Lubbock, Texas for ASSAULT PUBLIC SERVANT (a 3rd Degree felony offense), EVADING ARREST/ DETENTION W/ VEHICLE (a State Jail Felony offense), and DRIVING WHILE INTOXICATED (a Class B misdemeanor offense).

Respondent was subsequently charged under Cause No. 05-2743 for EVADING ARREST and ATTEMPTED CAPITAL MURDER. On or about June 23, 2008, Cause No. 05-2743 was dismissed in 106th Judicial District Court of Lynn County, Texas, for the reason: "The Defendant was re-indicted in Cause No. 05-2754."

Respondent was subsequently charged under Cause No. 05-2754 for EVADING ARREST. On or about December 19, 2005, Cause No. 05-2754 was dismissed in 106th Judicial District Court of Lynn County, for the reason: "This case was taken into consideration under Section 12.45 when punishment was assess in Cause # 05-2755."

On or about December 19, 2005, Respondent entered a plea of Guilty to TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE (a 3rd Degree felony offense committed on November 30, 2004), in the 106th Judicial District Court of Lynn County, Texas, under Cause No. 05-2755. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of three (3) years. Additionally, Respondent was ordered to pay a fine and court costs. On or about December 29, 2008, Respondent was released from probation.

10. In response to Finding of Fact Number Nine (9), Respondent states he and his wife had an argument at her parent's home. He states it was the worst day of his life as this was the first time he had a drink since June 26, 1992. Respondent states he was pulled over by the DPS in Tahoka, Texas and after going through a sobriety test, he drove off. He admits to evading arrest, but states he did not assault a public servant at any time of the incident. Respondent states he threw out a snuff spit bottle out of the window and after going before a Grand Jury, all charges were dropped except for Tampering with Evidence, which related to him throwing out the bottle. He states he was advised by his attorney to plead to the charge and he was given deferred adjudication, with three (3) years probation, community service, and a fine. Respondent states he has completed the sentencing and have been sober since December 1, 2004. He states he attends AA meetings at least three (3) times a week, and usually more.

11. On or about November 5, 2005, Respondent submitted a Texas Online Renewal Document Registered Nurse to the Board of Nurse Examiners for the State of Texas in which he provided false, deceptive, and/ or misleading information, in that he answered "No" to the question:

"Have you ever been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests (excluding minor traffic violations) since your last renewal? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. Please note that DUIs, DWIs, and PI's must be reported and are not considered minor traffic violations. (One time minor in possession [MIP] or minor in consumption [MIC] does not need to be disclosed; therefore, you may answer "No." If you have two or more MIPs or MICs, you must answer "Yes".)"

Respondent failed to disclose that on or about November 30, 2004, Respondent was arrested by the Texas Highway Patrol, Lubbock, Texas for ASSAULT PUBLIC SERVANT (a 3rd

Degree felony offense), EVADING ARRESTED/ DETENTION W/ VEHICLE (a State Jail Felony offense), and DRIVING WHILE INTOXICATED (a Class B misdemeanor offense). At the time of renewal, the case was still pending.

12. On or about September 26, 2007, Respondent submitted a Texas Online Renewal Document Registered Nurse to the Board of Nurse Examiners for the State of Texas in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question:

"Have you ever been convicted, placed on community supervision whether or not adjudicated guilty, sentenced to serve jail or prison time or granted a pre-trial diversion, or plead guilty, no contest or nolo contendere to any crime in any state, territory or country, or received a court order whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests whether or not on appeal (excluding minor Class C traffic violations)? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. Please note that DUIs, DWIs, and PI's must be reported and are not considered minor traffic violations. One time minor in possession [MIP] or minor in consumption [MIC] does not need to be disclosed; therefore, you may answer "No." If you have two or more MIPs or MICs, you must answer "Yes". You may answer "No" if you have previously disclosed a criminal matter otherwise responsive to this question in a renewal and/ or licensure form."

Respondent failed to disclose that on or about December 19, 2005, Respondent entered a plea of Guilty to TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE, in Lynn County, Texas, under Cause No. 05-2755. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of three (3) years. On or about December 29, 2008, Respondent was released from probation.

13. In response to Findings of Fact Number Eleven (11) and Twelve (12), Respondent states he was advised by his attorney that he did not have to disclose the offense, since he was not convicted.

14. Respondent was arrested July 30, 2010 by the Odessa Police Department, Odessa, Texas for INJURY CHILD/ ELDERLY/ DISABLED RECKLESS BI (a State Jail Felony offense) and ASSAULT FAM/ HOUSE MEM IMPEDE BREATH/ CIRCULATION (a 3rd Degree Felony offense). The case is currently unindicted.

15. In response to Finding of Fact Number Fourteen (14), Respondent states he and his wife were having an argument about their kids and money and he admits the argument escalated but states his wife was the aggressor. He states he was defending himself in pushing his wife away from him and states he at no time hit or slapped his wife while defending himself. Respondent states his wife was holding their daughter and when he pushed his wife away from him, he left a red mark on his wife's neck and while his wife was going backwards,

their child bumped her head and left a small red mark beside her left eye. He states his wife left the room and he called 911 to diffuse the situation. Respondent states when the police showed up, they ended up arresting him, even though his wife told them she did not want him arrested and admitted to hitting him when he pushed back. He states his wife has signed an Affidavit of Non-Prosecution and talked to the District Attorney about getting the charges dropped and he has retained an attorney regarding the matter.

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 violations of Article 4525(b)(2)&(9), Tex. Rev. Civ. Stat. (effective September 1, 1993), and Section 301.452(b)(2),(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.13(17) (effective January 1, 1995) and 22 TEX. ADMIN. CODE §217.12(6)(I)&(13).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 617624, heretofore issued to DAVID NEFF, including revocation of Respondent's license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a WARNING WITH STIPULATIONS AND A FINE, and RESPONDENT SHALL comply 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 §211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable

to Respondent's nurse licensure compact 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 nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars ($500.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT 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) 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. RESPONDENT 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 RESPONDENT'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/disciplinaryaction/stipscourses.html.*

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) 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 STIPULATION PERIOD:

(3) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT 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. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT 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) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(5) For the remainder of the stipulation period, RESPONDENT 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 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 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.

(6) 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 Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for one (1) year of employment as a nurse.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

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. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, 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 Board. When this Order is ratified, the terms of this Order become effective, 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 nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 5 day of February, 2011.

DAVID NEFF, Respondent

Sworn to and subscribed before me this 5 day of February, 2011.

SEAL

Notary Public in and for the State of Texas

CLAUDIA NAVARRETE
Notary Public, State of Texas
My Commission Expires
October 06, 2012

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 5thday of February, 2011, by DAVID NEFF, Registered Nurse License Number 617624, and said Order is final.

Effective this 8th day of March, 20 11.

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

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

CONFIDENTIAL

In the Matter of Petitioner §
§
JOE DAVID NEFF §

DECLARATORY ORDER

A petition for eligibility has been received at the office of the Board of Nurse Examiners, hereinafter referred to as the Board, in accordance with Article 4519(a), Revised Civil Statutes of Texas, as amended, having been submitted by JOE DAVID NEFF, hereinafter referred to as Petitioner.

FINDINGS OF FACT

1. Petitioner is currently planning to enroll in an educational program that prepares an individual for initial licensure as a professional nurse in the State of Texas.

2. Petitioner has reason to believe that he may be ineligible for licensure as a professional nurse in the State of Texas.

3. On February 5, 1993, Petitioner submitted a petition for eligibility to take the National Council Licensure Examination for Registered Nurses.

4. The Board received a letter dated March 5, 1993, from Petitioner which states in pertinent part:

   " ... I am writing this letter to identify and explain the reasons leading to my treatment and progress and goals I have made and established subsequently.

   The circumstances in my life which led me to Alcoholics Anonymous were self-inflicted. I was living just to go to the next party or to the next night at a night club. My life got so mixed up during this time that I did not know who I was anymore. I graduated from Coahoma High School and attended Howard College for three years without receiving a degree. During this period from 1984 to 1989, drinking pretty much consumed most of my time. I could not hold a job for very long and lost most of my friends. I met and married my wife in 1990. I am still married and have one daughter age 10 months.

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My daughter and my wife are the main reasons that I sought treatment for my disease. I went into treatment at White River Retreat in June of 1992 and completed a 26 day program. I am now an active member of the 615 Settles Group in Big Spring, Texas. I attend meetings on a regular basis and do, to the best of my ability, the things suggested to me to keep my disease under control. I have a sponsor, V.H. (Hoss) Morris, and many others in the group who support me and help me continue to work a good program. I have re-entered Howard College in Big Spring and graduated with an Associate of Science Degree in December 1992. I am now attending the spring semester completing my pre-requisite requirements for admission into nursing school.

Why nursing school? I have been around medicine all of my life and was planning to become a veterinarian like my father Dr. Joe Kent Neff and my brother Dr. Bryan Garrett Neff. Due to my addiction and my grades in school during the time I was still using, I gave up and became a drunk. Since treatment I have been very interested in the nursing field. I like the medical profession and since being in A.A., I have learned a whole new meaning for the words "caring for others". I truly love being around people and lending a helping hand when needed. I hope to be able to do this as a Registered Nurse.

You might say my life has made a complete turnaround for the better and I am enjoying every day of it with my family and friends..."

5. The Board received a letter dated March 11, 1993, from Nancy LaRoux, Assistant Administrator, C.I., White River Retreat, Spur, Texas, which states in pertinent part:

"Per request from Joe David Neff, this letter is to confirm that he was admitted to the White River Retreat on June 23, 1992 for alcohol and drug dependence, being discharged on July 19, 1992.

He willingly participated in all assigned sessions both group and individual, his motivation continued throughout this time span.

Aftercare and discharge plan included attending four to five meetings weekly and he is complying per our reports.

His prognosis is good..."

6. The Board received the following in support of Petitioner:

A. Letter, postmarked March 29, 1993, from Virgil H. Morris, Big Spring, Texas
B. Letter, dated April 26, 1993, from Donald Frank Davis, LCDC/CADAC, Big Spring, Texas
C. Letter, dated April 28, 1993, from Shelley Smith, Big Spring, Texas

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CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Article 4519(a), Revised Civil Statutes of Texas, as amended.

2. Petitioner has submitted a petition in compliance with Article 4519(a), Revised Civil Statutes of Texas, as amended.

3. The evidence presented constitutes insufficient evidence to refuse admittance to the National Council Licensure Examination for Registered Nurses under powers granted by Article 4525(a), Revised Civil Statutes of Texas, as amended.

ORDER

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby order and declare that JOE DAVID NEFF is ELIGIBLE to take the National Council Licensure Examination for Registered Nurses.

This Order determines Petitioner's eligibility with respect to the basis for potential ineligibility set out in this Order only.

When applying to take the National Council Licensure Examination for Registered Nurses, Petitioner must provide evidence of continued sobriety, evidence of support group attendance, and fitness to practice professional nursing.

Upon graduation, one of the following conditions may apply:

1. Upon submitting to the Board a completed application to take the National Council Licensure Examination for Registered Nurses, Petitioner may be required to participate in the Texas Peer Assistance Program for Nurses (TPAPN); or,

2. Petitioner's license may be subject to disciplinary action including but not limited to stipulations or probation conditions under which Petitioner may practice.

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Any inaccuracies in the petition for eligibility may affect Petitioner's ability to take the National Council Licensure Examination for Registered Nurses.

Any subsequent violation of the Nurse Practice Act may affect Petitioner's eligibility to take the National Council Licensure Examination for Registered Nurses.

Entered this 20th day of July, 1993.

BOARD OF NURSING STATE OF TEXAS

Louise Waddill, Ph.D., R.N.
Executive Director on behalf of said Board