

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 734002 §
issued to HEATHER KATHLEEN SIMMONS § ORDER



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.
Heather K. Simmons
Executive Director of the Board

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 734002, issued to HEATHER KATHLEEN SIMMONS, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c) of the Texas Occupations Code.

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

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was provided to Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license.
2. Respondent waived 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 a Baccalaureate Degree in Nursing from Middle Tennessee State University, Murfreesboro, Tennessee, on May 11, 1996. Respondent received a Masters Degree in Nursing from Barry University, Miami Shores, Florida, on August 3, 2002. Respondent completed a Family Nurse Practitioner Program at Barry University, Miami Shores, Florida, on August 1, 2002. Respondent was licensed to practice professional nursing in the State of Texas on September 20, 2006. Respondent was recognized to practice as a Family Nurse Practitioner on June 13, 2006 and received prescriptive authorization on September 22, 2006.

5. Respondent's complete professional nursing employment history is unknown.
6. At the time of the incidents described in Findings of Fact Numbers Seven (7) and Eight (8), Respondent was employed as a Nurse Practitioner with Community Action Corporation of South Texas, Alice, Texas, and had been in this position for six (6) months.
7. On or about March 10, 2008, while employed as a Nurse Practitioner for Community Action Corporation of South Texas, Alice, Texas, Respondent obtained thirty (30) Norco 10/325 tabs by instructing an employee under Respondent's supervision to telephonically communicate a prescription for Respondent to the Harrel's Kingsville Pharmacy, Kingsville, Texas, under her own name, using the name and Drug Enforcement Agency (DEA) number assigned to the medical director, without her authorization. Respondent's conduct was likely to deceive the pharmacy and possession of Norco through use of a unauthorized, fraudulent telephonically communicated prescription is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
8. On or about May 7, 2008 while employed as a Nurse Practitioner for Community Action Corporation of South Texas, Alice, Texas Respondent obtained sixty (60) Norco 10/325 tabs by instructing an employee under Respondent's supervision to telephonically communicate a prescription for Respondent to the Harrel's Kingsville Pharmacy, Kingsville, Texas, under her own name, using the name and Drug Enforcement Agency (DEA) number assigned to the medical director without her authorization. Respondent's conduct was likely to deceive the pharmacy and possession of Norco through use of a unauthorized, fraudulent telephonically communicated prescription is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
9. In response to Findings of Fact Number Seven (7) and Number Eight (8), Respondent presented mitigating factors including retaliation and non-licensed employees providing statements without Respondent's knowledge, which were not only inaccurate, but left out key facts, such as Respondent's belief that the physician noted in the allegations was consciously aware of the prescriptions in question.

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10. Respondent completed a Forensic Psychological Evaluation with chemical dependency component and polygraph examination on November 24, 2009 performed by Doctor Troy Martinez, Psy.D. and Larry Serna, Polygraph Services. Doctor Martinez recommends, that based on available information, Respondent be referred to TPAPN for the primary purposes of having a monitoring device in place with respect to her narcotic drug use. Dr. Martinez also recommends that Respondent participate in a course of stress management to improve self-monitoring behavior, as well as increasing coping resource for better appreciating and managing stress given what he believes was its impact on her lapses in judgement and decisions now under investigation by the Board. Dr. Martinez concludes that Respondent is capable of conducting herself in accordance with the requirements of Rules, and consistently be able to avoid behaviors identified as constituting unprofessional misconduct.
11. Respondent, by her signature to this Order, expresses her desire to voluntarily surrender her license to practice nursing in the State of Texas.
12. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.
13. 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.

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 Section 301.452(b)(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(H),(8),(10)(E)&(11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.453(a), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 734002, heretofore issued to HEATHER KATHLEEN SIMMONS, including revocation of Respondent's license to practice nursing in the State of Texas.
5. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

6. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.
7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the VOLUNTARY SURRENDER of Registered Nurse License Number 734002, heretofore issued to HEATHER KATHLEEN SIMMONS, to practice nursing in the State of Texas, is accepted by the Texas Board of Nursing. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice professional nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying herself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.
3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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.

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ER ADMITTING

02:54:31 p.m. 07-02-2010

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. 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 becomes final when accepted by the Executive Director at which time the terms of this Order become effective and a copy will be mailed to me.

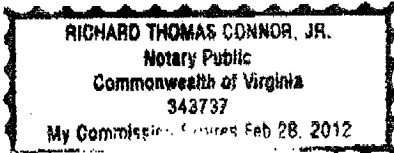
Signed this 1st day of July, 2010.

Heather K. Simmons
HEATHER KATHLEEN SIMMONS, Respondent

Sworn to and subscribed before me this 1 day of July, 2010.

[Signature]

SEAL



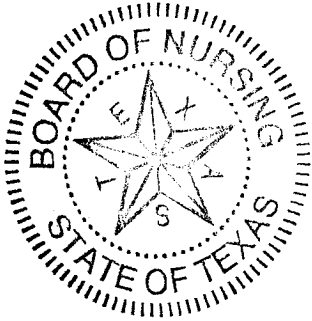
Notary Public in and for the State of Virginia

Approved as to form and substance.

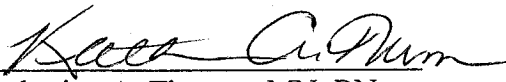
[Signature]
Joe A. Flores, JD, FNP, RN, Attorney for Respondent

Signed this 1st day of JULY, 2010

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Registered Nurse License Number 734002, previously issued to HEATHER KATHLEEN SIMMONS.



Effective this 9th day of July, 2010.


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