

7. Formal Charges were mailed to Respondent on October 3, 2007.
8. On July 24, 2007, Respondent submitted a statement to the Board voluntarily surrendering the right to practice vocational nursing in Texas. Respondent telephonically confirmed his desire to voluntarily surrender his license on October 8, 2007.
9. 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.
10. 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 violation of Section 301.452(b)(1),(9)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(9)&(11)(B).
4. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.
5. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.
6. Any subsequent reinstatement of this license will be controlled by Section 301.452 (b), Texas Occupations Code, and 22 TAC §§213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

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ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Vocational Nurse License Number 208816, heretofore issued to KENNETH BRADLEY ALLEN, to practice vocational nursing in the State of Texas, is accepted by the Executive Director on behalf of the Board of Nurse Examiners. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL immediately deliver the wallet-sized license, heretofore issued to KENNETH BRADLEY ALLEN, to the office of the Texas Board of Nursing.
2. RESPONDENT SHALL NOT practice vocational nursing, use the title of vocational nurse or the abbreviation LVN or wear any insignia identifying himself as a vocational nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a vocational nurse during the period in which the license is surrendered.
3. 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.
4. 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 multistate licensure privilege, if any, to practice vocational nursing in compact states.

Effective this 9th day of October, 2007.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

By:


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

July 24th, 2007

Board of Nursing for the State of Texas

Re: License

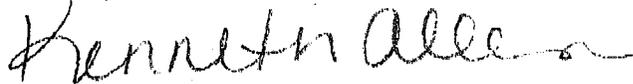
To Whom It May Concern:

I, Kenneth Bradley Allen, wish to surrender my license effective immediately. I fully understand that this means that I will not be able to work in the state of Texas as a nurse. I appreciate all that you have considered doing in my case.

Please let me know if there is anything else I need to do. Also, just because you have the legal right to punish someone, doesn't mean you should.

Thanks

Sincerely



Kenneth Allen

License # 208816

In the Matter of Permanent License § **BEFORE THE BOARD**
Number 208816, Issued to § **OF NURSE EXAMINERS**
KENNETH BRADLEY ALLEN, Respondent § **FOR THE STATE OF TEXAS**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KENNETH BRADLEY ALLEN, is a Vocational Nurse holding license number 208816, 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 March 22, 2007, while employed with Paris Regional Medical Center, Paris, Texas, Respondent failed to comply with the Eligibility Agreed Order issued to him on February 9, 2007, by the Board of Nurse Examiners for the State of Texas. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Three (3) of the Order which states, in pertinent part:

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

Specifically, Respondent admitted that he was not in good recovery from his chemical dependency due to his drinking while on vacation in Mexico.

A copy of the February 9, 2007, Eligibility Agreed Order and its Findings of Fact, Conclusions of Law, and Order is attached and incorporated herein.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1),(9)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(9)&(11)(B).

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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).

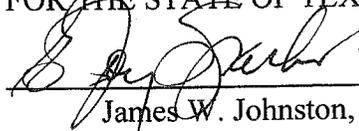
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bne.state.tx.us.

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.bne.state.tx.us.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Eligibility 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: Eligibility Agreed Order dated February 9, 2007.

Filed this 27th day of September, 2007.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS



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. 0079585

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

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

P: (512) 305-6824

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Attachments: Eligibility Agreed Order dated February 9, 2007.

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

| | | |
|-------------------------------|---|--------------|
| In the Matter of | § | ELIGIBILITY |
| KENNETH BRADLEY ALLEN | § | |
| APPLICANT for Eligibility for | § | AGREED ORDER |
| Licensure | § | |

On the date entered below, the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the Application for Licensure by Endorsement and supporting documents filed by KENNETH BRADLEY ALLEN, hereinafter referred to as APPLICANT, together with any documents and information gathered by staff and APPLICANT's Certificate contained herein. Information received by the Board produced evidence that APPLICANT may have violated Section 301.452(b)(3)&(9), Texas Occupations Code.

APPLICANT waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on October 24, 2006, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about July 27, 2006, Applicant submitted a Application for Licensure by Endorsement requesting a determination of eligibility for licensure in compliance with 301.260 *et seq.*, Texas Occupations Code.
2. Applicant waived representation, notice, administrative hearing, and judicial review.
3. Applicant received a Certificate in Vocational Nursing from Kiamichi Technology Center, Hugo, Oklahoma, in June 2006.
4. Applicant completed the Application for Licensure by Endorsement and answered "yes" to Question Number Thirteen (13), which reads as follows: *"Have you been convicted, adjudged guilty by a court, pled 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? This includes expunged offenses and deferred adjudication with or without prejudice of guilt."*

5. Applicant disclosed the following criminal history, to wit:
 - A. On April 19, 2004, Applicant plead no contest to the misdemeanor offense of Public Intoxication in the Municipal Court of the City of Paris, Lamar County, Texas, and was assessed a fine and court costs in the amount of four hundred forty-eight dollars (\$448.00).
 - B. On April 7, 2003, Applicant was charged with the misdemeanor offense of Theft By Check in the County Court of Denton County, Texas. On December 7, 2005, the case was dismissed after Applicant paid restitution.
6. There is no evidence of any subsequent criminal conduct.
7. Applicant completed the Application for Licensure by Endorsement and answered "yes" to Question Number Sixteen (16) which reads as follows: "*Within the past five (5) years have you been addicted to and/or treated for the use of alcohol or any other drug?*"
8. In 2004, Applicant voluntarily entered an inpatient facility called Oak Haven in Marshall, Texas, for 23 days, followed with six (6) months of outpatient group therapy.
9. Applicant presented evidence of current fitness to practice vocational nursing.
10. Applicant presented satisfactory proof of two (2) consecutive years of sobriety and support group attendance.
11. The safety of patients and the public requires that all persons licensed to practice nursing be fit, sober, and able to consistently practice nursing in autonomous roles under demanding and stressful conditions.
12. The Executive Director considered evidence of Applicant's substance abuse and subsequent rehabilitation as provided in §213.29, 22 Texas Administrative Code.
13. Licensure of Applicant poses no direct threat to the health and safety of patients or the public, provided Applicant complies with the stipulations outlined in this Order.
14. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of the information provided by Applicant.
15. The Board has determined that the Applicant for licensure who has not been fit and sober for a period of at least five (5) continuous years [sixty (60) continuous months], poses a direct threat to the health and safety of patients and the public and should not be issued an unencumbered license.

16. Applicant has sworn that, with the exception of matters disclosed in connection with the Temporary License/Endorsement Application, his past behavior conforms to the Board's professional character requirements. Applicant presented no evidence of behavior which is inconsistent with the Board's character requirements in 22 Texas Administrative Code §213.27.
17. On October 24, 2006, the Executive Director considered evidence of Applicant's past behavior in light of the character factors set out in 22 Texas Administrative Code, §213.27 and determined that Applicant currently demonstrates the criteria required for good professional character.
18. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 Texas Administrative Code §213.27, the Board is satisfied that the individual is able to consistently conform his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.
19. Applicant'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. The Board of Nurse Examiners has jurisdiction over this matter pursuant to Section 301.453 *et seq.*, Texas Occupations Code.
2. Applicant has submitted an application in compliance with Section 301.260 *et seq.*, Texas Occupations Code.
3. Applicant shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452 *et seq.*, Texas Occupations Code.
4. The Board of Nurse Examiners may license an individual who has a history of substance abuse, after consideration of the criteria set out in 22 Texas Administrative Code §213.29, the Board determines the Applicant does not currently pose a direct threat to the health and safety of patients or the public.
5. The Board may license an individual with prior behaviors inconsistent with the Board's character requirements if, upon evaluation of the factors in 22 Texas Administrative Code §213.27, the Board is satisfied that the individual is able to consistently conform his conduct to the requirements of the Nursing Practice Act, the Board's Rules and Regulations, and generally accepted standards of nursing practice.

6. The Board may, in its discretion, order an Applicant, upon initial licensure as a registered 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 that the application of KENNETH BRADLEY ALLEN, APPLICANT, is hereby conditionally GRANTED and shall be subject to conditions.

(1) APPLICANT shall obtain and read the Texas Nursing Practice Act, and the Rules and Regulations Relating to Nurse Education, Licensure and Practice.

(2) IT IS FURTHER ORDERED that APPLICANT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, 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 this Order.

IN ADDITION, IT IS THEREFORE FURTHER AGREED and ORDERED that APPLICANT, upon initial licensure, SHALL comply with the following conditions for such a time as is required for APPLICANT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) APPLICANT SHALL, within forty-five (45) days of initial licensure, 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 (\$350.00) payable to TPAPN.

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

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

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

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

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

IT IS FURTHER AGREED, SHOULD APPLICANT 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 a APPLICANT's license to practice vocational nursing in the State of Texas.

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APPLICANT'S CERTIFICATION

I am the Applicant in this matter. I have fully and truthfully disclosed all relevant information in conformity with Rule 213.29 at Texas Administrative Code. I certify that my past behavior, except as disclosed in my Application for Licensure by Endorsement, 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 conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

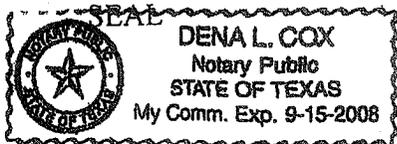
In connection with my application, I acknowledge that I have read and I understand Section 301.257, Texas Occupations Code, Section 301.452 (a),(b) and (c), Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations set out in this Order. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any permit or license from the Board of Nurse Examiners.

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.

I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 31 day of January, 2007
Kenneth Bradley Allen
KENNETH BRADLEY ALLEN, APPLICANT

Sworn to and subscribed before me this 31st day of January, 2007



Dena L Cox
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 ratify and adopt the Order of Conditional Eligibility that was signed on the 31st day of January, 2007, by KENNETH BRADLEY ALLEN, APPLICANT, for Temporary License/Endorsement Application, and said Order is final.

Entered and effective this 9th day of February, 2007.


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