

BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

\*\*\*\*\*

In the Matter of Registered Nurse License Number 572442     §  
issued to KIMBERLY MICHELLE KELLEY                             §

ORDER OF THE BOARD

On this day, the Board of Nurse Examiners for the State of Texas, hereinafter refer to as the Board, accepted the voluntary surrender of Registered Nurse License Number 572442, issued to KIMBERLY MICHELLE KELLEY, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal conference, notice and hearing.

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

FINDINGS OF FACT

1. Respondent is currently licensed to practice professional nursing in the State of Texas.
2. Respondent waived representation by counsel, informal conference, notice and hearing.
3. Respondent received an Associate Degree in Nursing from Cooke County College, Gainesville, Texas, on May 10, 1991. Respondent was licensed to practice professional nursing in the State of Texas on August 26, 1991.
4. Respondent's professional nursing employment history includes:

8/91-12/91	Staff Nurse	Parkland Health and Hospital System Dallas, Texas
1/92-7/93	Unknown	



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

Respondent's professional nursing employment history continued:

8/93-6/05	Staff Nurse	Presbyterian Hospital of Denton Denton, Texas
6/05-9/05	Staff Nurse	Las Colinas Medical Center Las Colinas, Texas
Unknown	Staff Nurse	Wise Regional Health System Decatur, Texas

5. On June 7, 2006, Respondent was issued an Agreed Order by the Board of Nurse Examiners for the State of Texas which required her to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated June 7, 2006, is attached and incorporated by reference as part of this Order.
6. Formal Charges were filed on June 22, 2007. A copy of the Formal Charges is attached and incorporated by reference as part of this Order.
7. Formal Charges were mailed to Respondent on June 29, 2007.
8. On July 19, 2007, Respondent submitted a notarized statement to the Board voluntarily surrendering the right to practice professional nursing in Texas, which is attached and incorporated by reference as part of this Order.
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 a violation of Section 301.452(b)(1)&(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 Registered Nurse License Number 572442, heretofore issued to KIMBERLY MICHELLE KELLEY, to practice professional 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 KIMBERLY MICHELLE KELLEY, to the office of the Board of Nurse Examiners.
2. RESPONDENT SHALL NOT practice professional nursing, use the title of "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.
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 professional nursing in compact states.

Effective this 23rd day of July, 2007.

BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

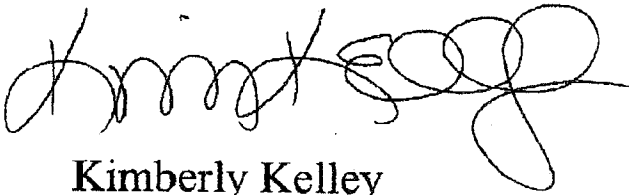
By:   
Katherine A. Thomas, MN, RN  
Executive Director on behalf  
of said Board

July 19, 2007  
Re: Kimberly Kelley  
License # 572442

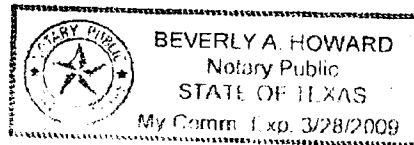
Candace Heisserman,

As of this day, July 19, 2007 I request to voluntarily  
surrender my license as a RN in the state of Texas. I  
acknowledge the allegations against my license, but do not  
admit or deny guilt.

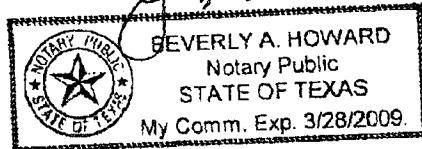
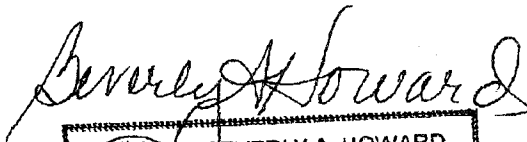
Sincerely,



Kimberly Kelley  
License # 572442



*Signed before me this 19<sup>th</sup> day of July 2007*



**In the Matter of Permanent License** § **BEFORE THE BOARD**  
**Number 572442, Issued to** § **OF NURSE EXAMINERS**  
**KIMBERLY MICHELLE KELLEY, Respondent** § **FOR THE STATE OF TEXAS**

### **FORMAL CHARGES**

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, KIMBERLY MICHELLE KELLEY, is a Registered Nurse holding license number 572442, 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 November 28, 2006, while employed with Wise Regional Health System, Decatur, Texas, Respondent engaged in the intemperate and/or unlawful use of Propoxyphene as evidenced by a positive drug screen. Possession of Propoxyphene without a lawful prescription is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Propoxyphene by a nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

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

#### **CHARGE II.**

On or about November 28, 2006, while employed with Wise Regional Health System, Decatur, Texas, Respondent failed to comply with the Agreed Order issued to her by the Board of Nurse Examiners for the State of Texas on June 7, 2006. Non-compliance is the result of her intemperate and/or unlawful use of Propoxyphene as evidenced by a positive drug screen. Stipulation Number Three of the Agreed Order dated June 7, 2006, states:

**RESPONDENT SHALL** comply with all requirements of the TPAPN during its contract.

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(9)&(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).

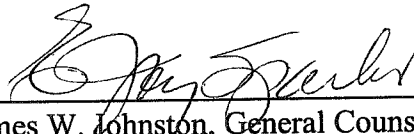
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bne.state.tx.us](http://www.bne.state.tx.us).

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](http://www.bne.state.tx.us).

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the 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 June 7, 2006.

Filed this 22nd day of June, 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. 00789585

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  
F: (512) 305.8101 or (512)305-7401

Attachments: Order of the Board dated June 7, 2006

0999/D





5. Respondent's professional nursing employment history includes:

8/91-12/91	Staff Nurse	Parkland Health and Hospital System Dallas, Texas
12/91-8/93	Unknown	
8/93-6/05	Staff Nurse	Presbyterian Hospital of Denton Denton, Texas
6/05-9/05	Staff Nurse	Las Colinas Medical Center Las Colinas, Texas
9/05-Present	Unknown	

6. At the time of the initial incident, Respondent was employed as a Staff Nurse with Las Colinas Medical Center, Las Colinas, Texas, and had been in this position for approximately one (1) month.
7. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent lacked fitness to practice professional nursing in that Respondent suffers from Bipolar Disorder and exhibited impaired behavior while on duty, including but not limited to: flat affect, slow speech, hand tremors, the inability to focus, and being unaware of her surroundings. Respondent's conduct could have affected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
8. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent engaged in the intemperate use of Alprazolam and Hydrocodone as evidenced by a positive drug screen. Possession of Alprazolam and Hydrocodone is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Alprazolam and Hydrocodone by a nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.
9. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent failed to administer Cytotec to a patient as ordered by the physician in that Respondent administered the second dose of Cytotec at 0500 instead of 0300.

Respondent's conduct caused a delay in the induction of labor for the patient which was likely to have exposed the patient unnecessarily to risk of additional stress and discomfort.

10. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent failed to fax a post-delivery patient's physician's orders to the pharmacy. Respondent's conduct was likely to injure the patient in that it caused a delay in patient's ordered medications being profiled in the Acudose Medication Dispensing System and eMAR and could have caused a delay in the patient receiving the ordered medications.
11. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent failed to institute a post delivery patient's On-Q pain relief pump as ordered by the physician. Respondent's conduct was likely to have exposed the patient unnecessarily to risk of additional stress and discomfort.
12. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent failed to remove a post-delivery patient's epidural catheter. Respondent's conduct was likely to have injured the patient in that it could have resulted in the patient suffering from adverse reactions such as a spinal infection and/or paralysis.
13. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent administered Toradol to a patient without a valid physician's order. Respondent's conduct was likely to injure the patient in that the administration of Toradol without a valid physician's order could have resulted in the patient suffering from adverse reactions.
14. On or about July 18, 2005, while employed with Las Colinas Medical Center, Irving, Texas, Respondent left her nursing assignment for an extended period of time without notifying her appropriate supervisor. Respondent's conduct was likely to injure patients in that leaving the nursing assignment could have resulted in the patients not getting the care that they needed.
15. Respondent states that at the time of the preceding Findings of Fact she had a problem with self-medicating. Respondent states that she has since attended an intensive outpatient treatment program and attends group meetings once or twice a week. Respondent states that she has remained clean and sober since completing treatment.
16. Dr. Timothy Christian McGuire, Respondent's treating physician, states that no evidence of Respondent's use of unprescribed drugs exists and Respondent is currently compliant with treatment/aftercare recommendations. Dr. McGuire states that Respondent does not take any prescription medications other than Ambien, which he prescribed for chronic insomnia. Dr. McGuire does not believe that Respondent currently or potentially poses a direct threat to the health and safety of patients/clients, their family or significant others, or the public.

17. Debbie Hackett, BS, LCDC, Respondent's counselor, states that she finds that there is evidence of Respondent using unprescribed drugs/alcohol. She states that Respondent reports drinking alcohol one (1) time during treatment. Respondent also tested positive for Opiates and Benzodiazepines on August 29, 2005. Ms. Hackett states that Respondent is not compliant with treatment/aftercare recommendations. She states that Respondent has not attended any aftercare groups or shown attendance at 12-step meetings. Ms. Hackett believes that Respondent currently or potentially poses a direct threat to the health and safety of patients/clients, their family or significant others, or the public. Ms. Hackett states that the stability of Respondent's recovery is inconclusive.
18. 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.
19. The Board finds that there exists serious risks to public health and safety due to the intemperate use of controlled substances or chemical dependency.
20. Respondent's conduct described in the preceding Findings of Fact was significantly influenced by Respondent's impairment by dependency on chemicals and mental illness.
21. 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 violation of Section 301.452(b)(9),(10),(12)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.11(1)(C)&(M). and 22 TEX. ADMIN. CODE §217.12(5),(10)(A)&(12).
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 572442, heretofore issued to KIMBERLY MICHELLE KELLEY, including revocation of Respondent's professional license to practice 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 five hundred dollars (\$500) payable to TPAPN.

(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 professional 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 professional 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 professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 5<sup>th</sup> day of June, 2006.

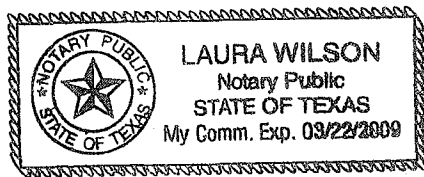
Kimberly Michelle Kelley  
KIMBERLY MICHELLE KELLEY, Respondent

Sworn to and subscribed before me this 5 day of June, 2006.

SEAL


Laura Wilson

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 5th day of June, 2006, by KIMBERLY MICHELLE KELLEY, Registered Nurse License Number 572442, and said Order is final.

Entered and effective this 7th day of June, 2006.



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