

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse License Number 458142 § AGREED
issued to RAPHAEL ELMO KEARNS, JR. § 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.
Patricia P. Thomas
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 458142, issued to RAPHAEL ELMO KEARNS, JR., hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c) of the Texas Occupations Code.

Respondent waived representation by counsel, informal conference 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 representation by counsel, 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 Diploma in Nursing from the Providence Hospital School of Nursing, Mobile, Alabama, on May 1, 1974. Respondent was licensed to practice professional nursing in the State of Texas on May 20, 1981.
5. Respondent's complete professional nursing employment history is unknown.
6. On or about January 9, 2008 through January 15, 2008, while employed with First Choice Emergency Room, Flower Mound, Texas, Respondent withdrew Demerol, Morphine, Dilaudid, and Lortab from the medication dispensing system for patients without a valid physician's order. Respondent's conduct was likely to injure the patients in that the administration of Demerol, Morphine, Dilaudid, and Lortab without a valid physician's order could result in the patient suffering from adverse reactions.

7. On or about January 9, 2008 through January 15, 2008, while employed with First Choice Emergency Room, Flower Mound, Texas, Respondent withdrew Demerol, Morphine, Dilaudid, and Lortab from the medication dispensing system for patients, but failed to follow the policy and procedure for the wastage of the medications. Respondent's conduct was likely to deceive the hospital pharmacy and placed them in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).
8. On or about January 9, 2008 through January 15, 2008, while employed with First Choice Emergency Room, Flower Mound, Texas, Respondent misappropriated narcotics, including but not limited to Demerol, Morphine, Dilaudid, and Lortab from the facility and patients thereof, in that Respondent admitted that he falsely documented the wastage of the medications and kept the narcotics. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
9. Respondent, by his signature to this Order, expresses his desire to voluntarily surrender his license to practice professional nursing in the State of Texas.
10. 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.
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.

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(1)(B),(4),(6)(G)(H), (10)(B)(C)(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 458142, heretofore issued to RAPHAEL ELMO KEARNS, JR., 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 458142, heretofore issued to RAPHAEL ELMO KEARNS JR., 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 immediately deliver the wallet-sized license, heretofore issued to RAPHAEL ELMO KEARNS JR., to the office of the Texas Board of Nursing.
2. RESPONDENT SHALL NOT practice professional nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying himself 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 privilege, if any, to practice nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

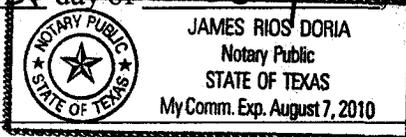
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and 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 ^{first} ~~25th~~ day of July, 2008.

Raphael Elmo Kearns, Jr.
RAPHAEL ELMO KEARNS, JR., Respondent

Sworn to and subscribed before me this ~~1st~~ day of July, 2008.

SEAL



Notary Public in and for the State of TX

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 458142, previously issued to RAPHAEL ELMO KEARNS, JR..

Effective this 7th day of July, 2008.


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