

BEFORE THE BOARD OF NURSE EXAMINERS  
FOR THE STATE OF TEXAS

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In the Matter of Registered Nurse           §     AGREED  
License Number 562126                   §  
issued to JANICE ANN CLARY           §     ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of JANICE ANN CLARY, Registered Nurse License Number 562126, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered by Katherine A. Thomas, MN, RN, Executive Director.

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 conference, 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 El Centro College, Dallas, Texas, on May 1, 1990. Respondent was licensed to practice professional nursing in the State of Texas on August 31, 1990.
5. Respondent's professional nursing employment history includes:

August 1990 - August 1995

Staff Nurse  
St. Joseph Hospital  
Paris, Texas

Respondent's professional employment history continued:

August 1995 - June 1996	Staff Nurse Towne and Country Home Health Paris, Texas
July 1996 - August 1998	Staff Nurse Hopkins County Memorial Sulphur Springs, Texas
September 1998 - August 2000	Staff Nurse McCouston Hospital Paris, Texas
September 2000 - August 4, 2003	Staff Nurse Charlton Methodist Hospital Dallas, Texas
August 5, 2003 - January 1, 2004	Employment Unknown
January 2, 2004 - November 30, 2004	Staff Nurse Pleasant Manor Health and Rehabilitation Waxahachie, Texas
December 1, 2005 - Present	Employment Unknown

6. At the time of the initial incident, Respondent was employed as a Staff Nurse with Charlton Methodist Hospital, Dallas, Texas, and had been in this position for approximately two (2) years and ten (10) months.
7. On or about July 22, 2003, through July 23, 2003, while employed at Charlton Methodist Hospital, Dallas, Texas, Respondent withdrew Hydromorphone, Demerol, Morphine, Hydrocodone, and Ambien for patients, but failed to document the administration of Hydromorphone, Demerol, Morphine, Hydrocodone, and Ambien in patients' medical records and failed to follow the policy and procedure for the wastage of said medications. Respondent's conduct above was likely to injure the patients in that subsequent care givers would rely on her documentation to further medicate the patient which could result in an overdose. Respondent's conduct was also 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 July 23, 2003, while employed at Charlton Methodist Hospital, Dallas, Texas, Respondent withdrew Hydromorphone for a patient who was not admitted to the hospital at the time of the withdrawal. 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).
9. On or about July 23, 2003, while employed at Charlton Methodist Hospital, Dallas, Texas, Respondent withdrew Hydromorphone and Demerol for patients without a physician's order. Respondent's conduct was likely to injure the patient in that the administration of Hydromorphone and Demerol in excess frequency and/or dosage of the physician's order could result in the patient suffering from adverse reactions.
10. On or about July 22, 2003, through July 23, 2003, while employed at Charlton Methodist Hospital, Dallas, Texas, Respondent misappropriated Hydromorphone, Demerol, Morphine, Hydrocodone, and Ambien belonging to the facility and patients thereof. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
11. On or about July 25, 2003, while employed at Charlton Methodist Hospital, Dallas, Texas, Respondent engaged in the intemperate use of Lorazepam, Morphine, Hydromorphone, Hydrocodone and Meperidine, in that Respondent produced a specimen for a drug screen which resulted positive for Lorazepam, Morphine, Hydromorphone, Hydrocodone and Meperidine. Possession of Lorazepam, Morphine, Hydromorphone, Hydrocodone and Meperidine is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Lorazepam, Morphine, Hydromorphone, Hydrocodone and Meperidine by a Registered 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.
12. On or about March 18, 2004, while employed at Pleasant Manor Health and Rehabilitation, Waxahachie, Texas, Respondent engaged in the intemperate use of Tramadol, in that she produced a specimen for a drug screen which resulted positive for Tramadol. Possession of Tramadol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Tramadol by a Registered 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.
13. On or about October 21, 2004, while employed at Pleasant Manor Health and Rehabilitation, Waxahachie, Texas, Respondent engaged in the intemperate use of Propoxyphene, in that she produced a specimen for a drug screen which resulted positive for Propoxyphene. Possession of Propoxyphene is prohibited by Chapter 481 of the Texas Health & Safety Code

(Controlled Substances Act). The use of Propoxyphene by a Registered 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.

14. 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.
15. 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.
16. Respondent's conduct described in Findings of Fact Numbers Seven (7) through Thirteen (13) resulted from Respondent's dependency on chemicals.
17. 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), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(3),(4),(18)&(19) and §217.12(10)(A)&(10)(D)(effective September 28, 2004).
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 562126, heretofore issued to JANICE ANN CLARY, 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.

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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.

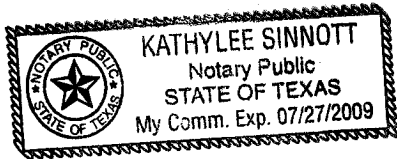
Signed this 14 day of July, 2006.

JANICE ANN CLARY  
JANICE ANN CLARY, Respondent

Sworn to and subscribed before me this 14 day of July, 2006.

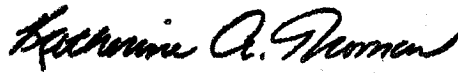
SEAL

KATHYLEE SINNOTT  
Notary Public in and for the State of TX



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 14th day of July, 2006, by JANICE ANN CLARY, Registered Nurse License Number 562126, and said Order is final.

Entered and effective this 3rd day of August, 2006.



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