



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 Thomas
 Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of § AGREED
 Registered Nurse License Number 607962 §
 issued to JAMES DAVID WISWALL § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of JAMES DAVID WISWALL, Registered Nurse License Number 607962, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived 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 served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived notice and hearing, and agreed to the entry of this Order.
3. Respondent's license to practice as a professional nurse in the State of Texas is in current status.
4. Respondent received an Associate Degree in Nursing from Austin Community College, Austin, Texas, on May 13, 1994. Respondent was licensed to practice professional nursing in the State of Texas on July 15, 1994.
5. Respondent's professional nursing employment history includes:

7/1994-12/1995	Staff Nurse	Hillcrest Baptist Medical Center Waco, Texas
1/1996-8/1996	Unknown	

Respondent's professional nursing employment history continued:

9/1996-3/1997	Staff Nurse	St. David's Hospital Austin, Texas
3/1997-3/2001	Staff Nurse	All About Staffing Austin, Texas
3/2001-6/2004	Staff Nurse	South Austin Hospital Austin, Texas
7/2004-12/2005	Unknown	
1/2006-8/2007	Staff Nurse	Children's Santa Rosa Hospital San Antonio, Texas
9/2007-present	Unknown	

6. On or about December 7, 2005, Respondent was issued an Agreed Order to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN) by the Texas Board of Nursing. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated December 7, 2005 is attached and incorporated, by reference, as part of this Order.
7. On or about April 17, 2008, Respondent was issued an ENFORCED SUSPENSION by the Texas Board of Nursing. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated April 17, 2008 is attached and incorporated, by reference, as part of this Order.
8. On or about March 2, 2015, Respondent submitted a Timely License Renewal Form to the Texas Board of Nursing in which he answered "Yes" to the question: "Have you, within the past 24 months or since your last renewal, for any criminal offense, including those pending appeal:
 - A. been convicted of a misdemeanor?
 - B. been convicted of a felony?
 - C. pled nolo contendere, no contest, or guilty?
 - D. received deferred adjudication?
 - E. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?
 - F. been sentenced to serve jail or prison time? court-ordered confinement?
 - G. been granted pre-trial diversion?
 - H. been arrested or have any pending criminal charges?

- I. been cited or charged with any violation of the law?
- J. been subject of a court-martial; Article 15 violation; or received any form of military judgement/punishment/action?"

On or about July 1, 2014, Respondent was arrested by the Austin Police Department, Austin, Texas, and subsequently charged under Cause Number C1CR14210502 for DRIVING WHILE INTOXICATED, a Class B misdemeanor offense. The court disposition for this matter is pending.

- 9. In response to Finding of Fact Number Eight (8), Respondent states he is currently active in TPAPN, and is in recovery from alcohol abuse.
- 10. Respondent, by his/her signature to this Order, expresses his/her desire to voluntarily surrender his/her license(s) to practice nursing in the State of Texas.
- 11. 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.
- 12. 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(s) of 22 TEX. ADMIN. CODE §217.12(4),(5)&(13).
- 4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9)&(10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 607962, heretofore issued to JAMES DAVID WISWALL, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
- 5. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.

6. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.
7. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.
8. 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.

TERMS OF ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the **VOLUNTARY SURRENDER** of Registered Nurse License Number 607962, heretofore issued to JAMES DAVID WISWALL, 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:

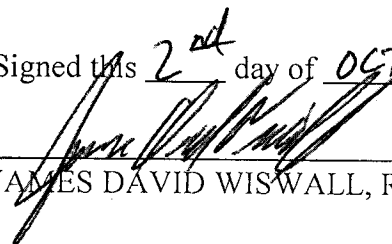
1. RESPONDENT SHALL NOT practice professional/registered nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying herself/himself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until:
 - A. One (1) year has elapsed from the date of this Order; and
 - B. RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition for reinstatement.
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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RESPONDENT'S CERTIFICATION

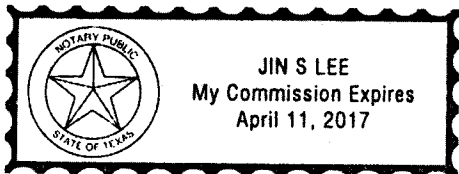
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this Order, and any conditions of said 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.

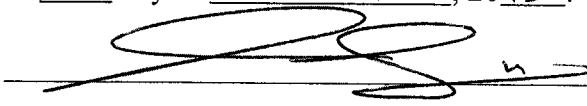
Signed this 2nd day of OCTOBER, 2015.


JAMES DAVID WISWALL, Respondent

Sworn to and subscribed before me this 2 day of OCTOBER, 2015.

SEAL





Notary Public in and for the State of TEXAS

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 607962, previously issued to JAMES DAVID WISWALL.

Effective this 5th day of October, 2015.



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



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.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse § AGREED
License Number 607962 §
issued to JAMES DAVID WISWALL § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board considered the matter of JAMES DAVID WISWALL, Registered License Number 607962 hereinafter referred to as Respondent.

~~Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(1), (9) and (10), Texas Occupations Code. Respondent waived representation by counsel, informal conference, notice and hearing, and agreed to the entry of this Order offered on January 14, 2008, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.~~

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 Austin Community College, Austin, Texas, on May 13, 1994. Respondent was licensed to practice professional nursing in the State of Texas on July 15, 1994.

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5. Respondent's professional nursing employment history includes:

7/94 - 12/95	Staff Nurse	Hillcrest Baptist Medical Center Waco, Texas
1/96 - 8/96	Unknown	
9/96 - 3/97	Staff Nurse	St. David's Hospital Austin, Texas
3/97 - 3/01	Staff Nurse	All About Staffing Austin, Texas
3/01 - 6/04	Staff Nurse	South Austin Hospital Austin, Texas
7/04 - 12/05	Unknown	
1/06 - 8/07	Staff Nurse	Children's Santa Rosa Hospital San Antonio, Texas
9/07 - present	Unknown	

6. On December 7, 2005, Respondent was issued an Agreed Order by the Board of Nurse Examiners for the State of Texas which required him to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the December 7, 2005, Agreed Order, Findings of Fact, and Conclusions of Law is attached and incorporated, by reference, as part of this Order.

7. Beginning in January 2007, Respondent failed to comply with the Agreed Order issued to him on December 7, 2005, by the Board of Nurse Examiners for the State of Texas. Noncompliance is the result of Respondent's failure to comply with all requirements of the Texas Peer Assistance Program for Nurses (TPAPN) contract in that Respondent submitted three (3) diluted specimens for drug testing and documentation discrepancies. Stipulation Number Three (3) of the Order dated December 7, 2005, states:

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

8. On or about August 15, 2007, while employed with Children's Santa Rosa Hospital, San Antonio, Texas, Respondent withdrew Fentanyl from the narcotic dispensing system for Patient RC0027661362 without a physician's order. Respondent's conduct was likely to injure the patient in that the administration of Fentanyl to patients without a physician's order could result in the patient suffering from respiratory depression.
9. On or about August 15, 2007, while employed with Children's Santa Rosa Hospital, San Antonio, Texas, Respondent withdrew Fentanyl from the narcotic dispensing system for Patient RC0027661362 but failed to document the administration of the Fentanyl on the Medication Administration Record or Nurses' Notes. Respondent's conduct was likely to injure the patient in that it deprived subsequent care givers of essential information on which to base their medical care.

10. Respondent's states late July 2007, as his date of sobriety.
11. Respondent freely admits that he did indeed withdraw Fentanyl for patients and failed to document the administration. The end of his relapse progression led him to use drugs not prescribed to him in late July 2007.
12. 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), (9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(C), (6)(G), (8), (9), (10)(A) (B), and (11)(B).
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 607962, heretofore issued to JAMES DAVID WISWALL, including revocation of Respondent's license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 607962, previously issued to JAMES DAVID WISWALL, to practice nursing in Texas is hereby SUSPENDED and said suspension is enforced until Respondent completes a treatment program approved by the Board, provides documentation of successful completion, and has obtained twelve (12) consecutive months of sobriety. Any relapse prior to the completion of the twelve (12) consecutive months of sobriety will result in an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED that Permanent Certificate Number 607962 previously issued to JAMES DAVID WISWALL, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice professional nursing in compact states.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED, upon verification of successful completion of the approved treatment and twelve (12) consecutive months of sobriety as set out in this Order, the Suspension will be stayed, and RESPONDENT will be placed on probation for three (3) years with the following agreed terms of probation:

(1) RESPONDENT 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.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and be issued a license to practice nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL pay a monetary fine in the amount of seven hundred fifty (\$750.00) dollars. ~~RESPONDENT SHALL pay this fine within forty-five (45) days of the~~ suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

(4) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in

addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: <http://www.bon.state.tx.us/about/stipscourses.html>.*

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF ~~SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION~~ CONDITIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(5) RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(7) For the first year of employment as a nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse. Direct supervision requires another nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a nurse.

(10) RESPONDENT SHALL NOT practice as a nurse in any critical care area for one (1) year of employment as a nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(11) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a nurse.

(12) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT's capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a nurse.

(13) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results**

of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.

(14) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the probation period, random screens shall be performed at least once every three (3) months.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the RESPONDENT's place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board. Failure to report for a drug screen may be considered the same as a positive result and may result in further disciplinary action by this Board.

(15) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least; the date of each meeting, the name of each group attended, and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

IT IS FURTHER AGREED and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license, the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, 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 is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, 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 nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 19th day of MARCH, 2008.

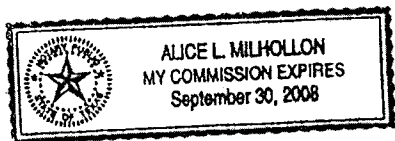
James David Wiswall
JAMES DAVID WISWALL, Respondent

Sworn to and subscribed before me this 19 day of March, 2008.

SEAL

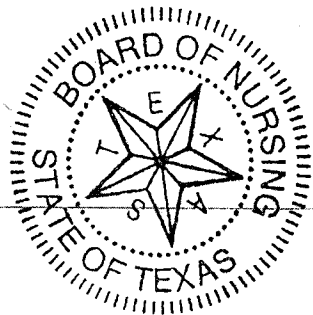
Alice L. Milhollon


Notary Public in and for the State of Texas



WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 19th day of March, 2008, by JAMES DAVID WISWALL, Registered Nurse License Number 607962, and said Order is final.

Effective this 17th day of April, 2008.




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

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of Registered Nurse License Number 607962 § AGREED
issued to JAMES DAVID WISWALL § ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of JAMES DAVID WISWALL, Registered Nurse License Number 607962, 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 on October 28, 2005, 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's license to practice professional nursing in the State of Texas is currently in delinquent status.
4. Respondent received an Associate Degree in Nursing from Austin Community College, Austin, Texas, on May 13, 1994. Respondent was licensed to practice professional nursing in the State of Texas on July 15, 1994.
5. Respondent's professional nursing employment history is as follows:

Prior to 1995	Unknown
12/1995 - 10/1996	Staff Nurse St. David's Hospital Austin, Texas

Respondent's professional nursing employment history continued:

10/1996 - 01/2000	Staff Nurse CSS Austin, Texas
01/2000 - 05/2001	Staff Nurse South Austin Hospital Austin, Texas
05/2001 - 04/2002	Staff Nurse CSS Austin, Texas
04/2002 - 05/2004	Staff Nurse South Austin Hospital Austin, Texas
05/2004 - Present	Unknown

6. On or about May 2, 2002, while employed with South Austin Hospital, Austin, Texas, Respondent misappropriated Demerol belonging to the facility and patients thereof. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
7. On or about January 27, 2004, while employed with South Austin Hospital, Austin, Texas, Respondent engaged in the intemperate use of Morphine in that Respondent produced a specimen which resulted positive for Morphine. Possession of Morphine is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Morphine 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.
8. On or about June 10, 2004, while employed with South Austin Hospital, Austin, Texas, Respondent misappropriated Fentanyl and Demerol belonging to the facility and patients thereof. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
9. On or about June 10, 2004, while employed with South Austin Hospital, Austin, Texas, Respondent falsely documented Physician's orders for Fentanyl and Demerol, withdrew Demerol and Fentanyl for patients, and documented the administration in patient's medical records. Respondent's conduct was likely to deceive the pharmacy and possession of Hydrocodone through use of a falsified prescription is prohibited by Chapter 483 of the Texas Health and Safety Code (Dangerous Drug Act).

10. 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.
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.
12. Respondent's conduct described in Finding Numbers Six (6), Seven (7), Eight (8), and Nine (9), was significantly influenced by Respondent's chemical dependency.
13. 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)(D), (19), & (20).
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 607962, heretofore issued to JAMES DAVID WISWALL, 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.

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.

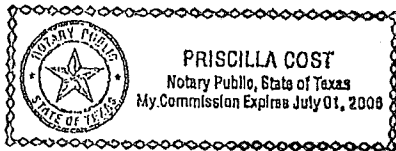
Signed this 28th day of NOVEMBER, 2005.

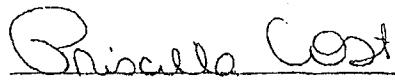


JAMES DAVID WISWALL, Respondent

Sworn to and subscribed before me this 28 day of Nov, 2005.

SEAL

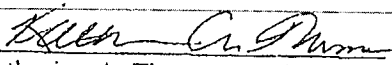




Notary Public in and for the State of Tx

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 28th day of November, 2005, by JAMES DAVID WISWALL, Registered Nurse License Number 607962, and said Order is final.

Entered and effective this 7th day of December, 2005.


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