

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of Registered Nurse	§	
License Number 555050	§	AGREED
issued to DAVID WAYNE MARTIN	§	ORDER

An investigation by the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, produced evidence indicating that DAVID WAYNE MARTIN, hereinafter referred to as RESPONDENT, Registered Nurse License Number 555050, may have violated Section 301.452(b)(9) and (10), Texas Occupations Code.

An informal conference was held on July 12, 2005, at the office of the Board of Nurse Examiners, in accordance with Section 301.464, of the Texas Occupations Code.

Respondent appeared in person. Respondent was represented by Nancy Roper Willson, RN, Attorney at Law. In attendance were Mary Beth Thomas, MSN, RN, Director of Nursing, Executive Director's Designee; Elizabeth Higginbotham, RN, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Christine Horton, RN, Investigator; and Diane E. Burell, Investigator.

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 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 Trinity Valley Community College, Kaufman, Texas, on May 8, 1989. Respondent was licensed to practice professional nursing in the State of Texas on August 25, 1989.

5. Respondent's professional employment history includes:

6/90 - 6/92	Weekend Supervisor	Vencor Hospital Dallas, Texas
2/92 - 4/94	Staff Nurse/Assistant DON	CC Young Memorial Home Dallas, Texas
2/94 - 2/95	Medicare Nurse	Four Seasons Nursing Center Dallas, Texas
11/94 - 2/95	Auditor	Genesis Value Check Dallas, Texas
3/95 - 5/96	Unit Manager	Convalescent Center Dallas, Texas
5/96 - 1/98	Charge Nurse	Terrell State Hospital Terrell, Texas
1/98 - 10/98	Staff Nurse	Vencor Hospital Dallas, Texas
11/98 - 10/01	Charge Nurse/House Supervisor	LifeCare Hospital Dallas, Texas
10/01 - 10/02	Staff Nurse	Kindred Hospital Dallas, Texas
2/02 - present	Staff Nurse	Doctor's Hospital Dallas, Texas
1/04 - 12/04	Night Supervisor	Kindred Hospital Dallas, Texas

6. Formal Charges were filed on January 10, 2005. 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 January 13, 2005.
8. Respondent states May 5, 2005, as his date of sobriety.

9. On June 2, 2005, Respondent underwent a forensic psychological evaluation conducted by John Lehman, PhD, Richardson, Texas. Dr. Lehman's report reflects that Respondent is unfit to practice as a professional nurse at this time. Respondent is severely depressed and requires an immediate evaluation by a psychiatrist and ongoing therapy. Dr. Lehman indicates that Respondent is an alcoholic and needs to be involved in a rehabilitation program (out-patient) followed by involvement in recovery groups, such as Alcoholics Anonymous. Respondent needs to abstain from all alcohol and illegal drugs. Dr. Lehman recommends that if Respondent engages in therapy and treatment, that he be reevaluated after six (6) months of treatment to ascertain if he has regained fitness to practice. Should Respondent successfully engage in treatment, his practice will need to be monitored for at least two (2) years.
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 violations of Section 301.452(b)(9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1).
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 555050, heretofore issued to DAVID WAYNE MARTIN, including revocation of Respondent's professional license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Board of Nurse Examiners, that License Number 555050, previously issued to DAVID WAYNE MARTIN, to practice professional nursing in Texas is hereby SUSPENDED and said suspension is enforced until Respondent completes an outpatient treatment program approved by the Board, provides documentation of successful completion, has obtained twelve (12) consecutive months of sobriety,

and is released, by John Lehman, PhD, to return to practice as a professional nurse. 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 555050 previously issued to DAVID WAYNE MARTIN, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, 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 the 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, upon verification of successful completion of the approved outpatient treatment, twelve (12) consecutive months of sobriety, and Dr. Lehman's release 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 Professional 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 professional nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL pay a monetary fine in the amount of five hundred (\$500.00) dollars. RESPONDENT SHALL pay this fine within forty-five (45) from the stay of suspension. Payment is to be made directly to the Board of Nurse Examiners 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 stay of suspension, successfully complete a course in nursing jurisprudence. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include Registered 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, and documentation of care. 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 can be found on the Board's website www.bne.state.tx.us (under BNE events).*

(5) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in nursing 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. The course shall be a minimum of six (6) contact hours in length. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: principles of nursing ethics; confidentiality; and professional boundaries. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to verify RESPONDENT's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. Board approved courses may be found on the Board's website, www.bne.state.tx.us (under BNE events).

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A REGISTERED 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 PROBATION 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:

(6) RESPONDENT SHALL notify all future employers in professional 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.

(7) RESPONDENT SHALL CAUSE each present employer in professional 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 professional nurse.

(8) For the first year of employment as a Registered Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse. Direct supervision requires another professional nurse to be working on the same unit as RESPONDENT and readily 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.

(9) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN 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 RN 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.

(10) RESPONDENT SHALL NOT practice as a professional 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 professional nurse.

(11) RESPONDENT SHALL NOT practice as a professional nurse in any critical care area for one (1) year of employment as a professional 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.

(12) 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 professional nurse.

(13) 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 professional nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a professional nurse.

(14) 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.**

(15) 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 second three (3) 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.

(16) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT is dismissed from therapy.

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

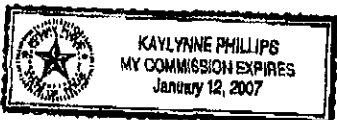
Signed this 12th day of April, 2006

David Wayne Martin
DAVID WAYNE MARTIN, Respondent

Sworn to and subscribed before me this 12th day of April, 2006.

SEAL

Kaylynne Phillips
Notary Public in and for the State of Texas




Approved as to form ^{and} substance,

Nancy Roper Willson
NANCY ROPER WILLSON, RN, Attorney for Respondent

Signed this 13th day of April, 2006

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Agreed Order that was signed on the 12th day of April, 2006, by DAVID WAYNE MARTIN, License Number 555050, and said Order is final.

Effective this 9th day of May, 2006.



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

In the Matter of Permanent License § **BEFORE THE BOARD**
Number 555050, Issued to § **OF NURSE EXAMINERS**
DAVID WAYNE MARTIN, Respondent § **FOR THE STATE OF TEXAS**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DAVID WAYNE MARTIN, is a Registered Nurse holding license number 555050, 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 September 15, 1999, while employed with LifeCare Specialty Hospital, Dallas, Texas, Respondent engaged in the intemperate use of Marijuana in that he produced a specimen for a drug screen which resulted positive for Marijuana. Possession of Marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Marijuana 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.

The above action constitutes a violation of Section 301.452(b)(9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1).

CHARGE II.

On or about November 24, 2003, Respondent engaged in the intemperate use of Cocaine in that he produced a specimen for a pre-employment drug screen which resulted positive for Cocaine. Possession of Cocaine is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substance Act). The use of Cocaine 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.

The above action constitutes a violation of Section 301.452(b)(9) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1).

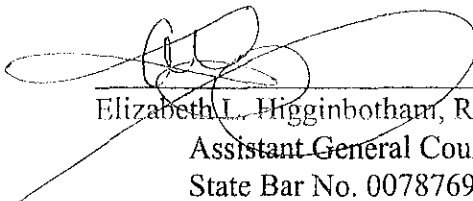
NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice professional nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent 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.

Filed this 16th day of January, 2005.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

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