

IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 168622	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
APRIL MARIE MOSBAUGH	§	BOARD OF NURSING

ORDER OF THE BOARD

TO: April Marie Mosbaugh
1417 SW 59th Street
Amarillo, Texas 79118

During open meeting held in Austin, Texas, on February 12, 2008, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case. This case was heard, and based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee of the Texas Board of Nursing finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, chapter 301 of the Texas Occupations Code, for retention of Respondent's license to practice vocational nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing (22 TEX. ADMIN.CODE § 213.2(j)). All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 168622, previously issued to APRIL MARIE MOSBAUGH, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 168622, previously issued to APRIL MARIE MOSBAUGH, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privilege, if any, to practice vocational nursing in the State of Texas.

Entered this 12th day of February, 2008.

TEXAS BOARD OF NURSING

BY: 
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of February, 2008, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

April Marie Mosbaugh
1417 SW 59th St
Amarillo, Texas 79118

BY:



KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of Permanent Vocational § **BEFORE THE TEXAS**
Nurse License Number 168622, Issued to §
APRIL MARIE MOSBAUGH, Respondent § **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, APRIL MARIE MOSBAUGH, is a Vocational Nurse holding license number 168622, 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 July 12, 2007, while employed with Dr. Philips Family Practice, Pampa, Texas, Respondent was non-compliant with the Agreed Order issued to her by the Board of Nurse Examiners for the State of Texas on March 1, 2007. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Three (3) of the Order which reads, in pertinent part:

- (3) "RESPONDENT SHALL comply with all requirements of the TPAPN contract during its term."

On or about July 12, 2007, Respondent became non-compliant with drug testing when she quit calling the drug test system.

A copy of the Findings of Fact, Conclusions of Law and Order of Conditional Eligibility dated March 1, 2007, is attached and incorporated by reference as part of this pleading.

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).

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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.bon.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.bon.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 March 1, 2007.

Filed this 13th day of December, 2007.

TEXAS BOARD OF NURSING



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

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6. At the time of the incident, Respondent was employed as a Vocational Nurse with Vivian's Nursing Home, Amarillo, Texas and had been in this position for one (1) year and seven (7) months.
7. On or about February 20, 2005, while employed with Vivian's Nursing Home, Amarillo, Texas, Respondent misappropriated Hydrocodone belonging to the facility and seven (7) patients thereof and replaced them with a generic form of Tylenol. Respondent's conduct was likely to defraud the facility and patients of the cost of the medication.
8. On February 9, 2006, Respondent plead "Guilty" to FRAUDULENT POSSESSION OF A CONTROLLED SUBSTANCE (a 3rd Degree Felony committed on or about February 20, 2005), under Cause Number 51789-E, in the 108th District Court of Potter County, Texas. As a result of the plea, Respondent was placed on an ORDER DEFERRING ADJUDICATION AND PLACING DEFENDANT ON COMMUNITY SUPERVISION for a period of three (3) years and ordered to pay a fine and court costs in the amount of one thousand two hundred ninety-three dollars (\$1293.00).
9. The Respondent's conduct described in the preceding Finding of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
10. 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 violations of Section 301.452(b)(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(G),(8),&(13).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 168622, heretofore issued to APRIL MARIE MOSBAUGH, including revocation of Respondent's license to practice vocational 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 three hundred fifty dollars (\$350) 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 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 nursing in the State of Texas.

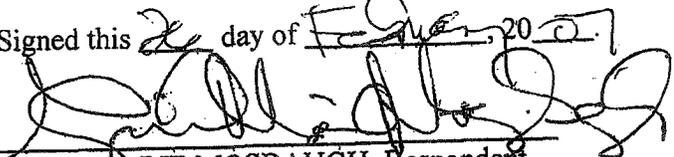
IT IS FURTHER AGREED, SHOULD RESPONDENT be convicted of the offense as outlined in Finding of Fact Number Eight (8), said judicial action will result in further disciplinary action including Revocation of Respondent's license to practice vocational nursing in the State of Texas.

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RESPONDENT'S CERTIFICATION

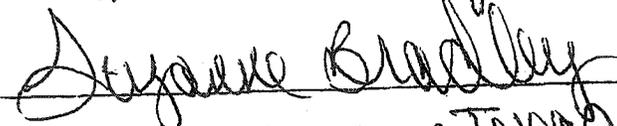
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By 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 vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 2nd day of February, 2007

APRIL MARIE MOSBAUGH, Respondent

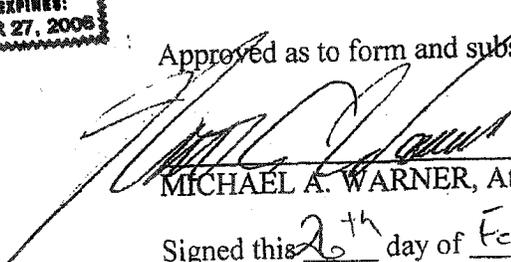
Sworn to and subscribed before me this 2nd day of February, 2007

SEAL




Notary Public in and for the State of Texas

Approved as to form and substance.


MICHAEL A. WARNER, Attorney for Respondent

Signed this 2th day of February, 2007.

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 26th day of February, 2007, by APRIL MARIE MOSBAUGH, Vocational Nurse License Number 168622, and said Order is final.

Entered and effective this 1st day of March, 2007.



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