

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse License Number 191053 § AGREED  
issued to GERARDO SERGIO GUTIERREZ, SR. § ORDER

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Vocational Nurse License Number 191053, issued to GERARDO SERGIO GUTIERREZ, SR., hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c) of the Texas Occupations Code.

Respondent waived informal proceedings 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 notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice vocational nursing in the State of Texas.
4. Respondent received a Certificate in Vocational Nursing from Odessa College, Monahans, Texas, on August 18, 2003. Respondent was licensed to practice vocational nursing in the State of Texas on October 14, 2003.
5. Respondent's vocational nursing employment history includes:

10/03-05/04	Night Charge Nurse	Pecos Nursing Home Pecos, TX
05/04-06/04	Resident Services Director	Palisades El Paso, TX

Respondent's vocational nursing employment history continued:

06/04-07/04	LVN	Sierra Providence Network El Paso, TX
07/04-04/05	LVN	Mountain View Healthcare Center El Paso, TX
04/05-10/05	PRN LVN	Mountain View Healthcare Center El Paso, TX
11/05-01/06	Unknown	
02/06-Present	Charge Nurse/ LVN	Mountain View Healthcare Center El Paso, TX

6. On or about February 12, 2004, Respondent was arrested by the Odessa Police Department, Odessa, Texas, for "Driving While Intoxicated," a Class B misdemeanor offense, and "Obstruction of a Passageway," a Class B misdemeanor offense.

On or about June 4, 2004, Respondent entered a plea of Not Guilty and was found Not Guilty to the offense of "Driving While Intoxicated."

On or about June 4, 2004, Respondent entered a plea of guilty and was convicted of "Obstruction of a Passageway," a Class B Misdemeanor offense committed on February 12, 2004, in the County Court at Law of Ector County, Texas, under Cause No. 04-0831. As a result, Respondent was sentenced to six (6) months confinement in the Ector County Jail; however, the imposition of the sentence of confinement was suspended, and Respondent was placed on probation for a period of nine (9) months. Additionally, Respondent was ordered to pay a fine.

7. On or about October 6, 2005, Respondent submitted an Online Renewal Document to the Texas Board of Nurse Examiners, in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question:

*"Have you been convicted, adjudged guilty by a court, plead guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrest (excluding minor traffic violations) since your last renewal? This includes expunged offenses and deferred adjudications with or without prejudice of guilt. Please note that DUI's DWI's PI's must be reported and are not considered minor traffic violations."*

On or about June 4, 2004, Respondent was convicted of the misdemeanor offense of "Obstruction of a Passageway."

8. On or about July 13, 2006, Respondent entered a plea of Guilty to "Aggravated Assault with a Deadly Weapon," a 2nd Degree Felony offense committed on October 29, 2005, in the 168th Judicial District Court of El Paso County, Texas, under Cause No. 2005D05315. As a result, the proceedings against Respondent were deferred without entering an adjudication of guilt, and Respondent was placed on community supervision for a period of ten (10) years. Additionally, Respondent was ordered to pay a fine.

On or about April 9, 2008, a Motion to Adjudicate Guilt was filed in the 168th Judicial District Court of El Paso County, Texas, under Cause No. 2005D05315.

9. On or about July 13, 2006, Respondent entered a plea of Guilty and was convicted of "Violating a Protective Order," a Class A misdemeanor offense committed on December 9, 2005, in the County Court at Law No. 2 of El Paso County, Texas, under Cause No. 20060C01194. As a result, Respondent was sentenced to confinement in the El Paso County Jail for a period of thirty (30) days, with the sentence of confinement to run concurrent with the sentences of confinement ordered in Cause Nos. 20060C04344 and 20060C03701.

10. On or about July 13, 2006, Respondent entered a plea of Guilty to "Aggravated Assault with a Deadly Weapon," a 2nd Degree Felony offense committed on committed on January 19, 2006, in the 168th Judicial District Court of El Paso County, Texas, under Cause No. 20060D00695. As a result, the proceedings against Respondent were deferred without entering an adjudication of guilt, and Respondent was placed on community supervision for a period of ten (10) years. Additionally, Respondent was ordered to pay a fine.

On or about April 9, 2008, a Motion to Adjudicate Guilt was filed in the 168th Judicial District Court of El Paso County, Texas, under Cause No. 20060D00695.

11. On or about July 13, 2006, Respondent entered a plea of Guilty and was convicted of "Violating a Protective Order," a Class A Misdemeanor offense committed between January 29, 2006 and February 3, 2006, in the County Court at Law No. 2 of El Paso County, Texas, under Cause No. 20060C04344. As a result, Respondent was sentenced to confinement in the El Paso County Jail for a period of thirty (30) days, with the sentence of confinement to run concurrent with the sentences of confinement ordered in Cause Nos. 20060C01194 and 20060C03701.

12. On or about July 13, 2006, Respondent entered a plea of Guilty and was convicted of "Violating a Protective Order," a Class A Misdemeanor offense committed on February 4, 2006, in the County Court at Law No. 2 of El Paso County, Texas, under Cause No. 20060C03701. As a result, Respondent was sentenced to confinement in the El Paso County Jail for a period of thirty (30) days, with the sentence of confinement is to run concurrent with the sentences of confinement ordered in Cause Nos. 20060C04344 and 20060C01194.

13. On or about November 25, 2007, Respondent submitted an Online Renewal Document to the Texas Board of Nursing, in which he provided false, deceptive, and/or misleading information, in that he answered "No" 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 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 judgment/punishment/action?

On or about July 13, 2006, Respondent entered pleas of Guilty to 2 counts of Aggravated Assault with a Deadly Weapon and was placed on 10 years deferred adjudication probation. Furthermore, Respondent also entered pleas of Guilty and was convicted of 3 counts of Violating a Protective Order.

14. On or about February 13, 2008, Respondent was indicted in the 168th Judicial District Court of El Paso County, Texas, under Cause No. 20080D00704, for "Injury to a Child/Elderly/Disable With Intent to Cause Bodily Injury," a 3rd Degree Felony offense committed on October 4, 2007.
15. Formal Charges were filed on May 13, 2008.
16. Formal Charges were mailed to Respondent on May 15, 2008.
17. Respondent, by his signature to this Order, expresses his desire to voluntarily surrender his license to practice nursing in the State of Texas.
18. 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.
19. 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)(2),(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(H)&(I)&(13).
4. The evidence received is sufficient cause pursuant to Section 301.453(d), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 191053, heretofore issued to GERARDO SERGIO GUTIERREZ, SR., 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 Vocational License Number 191053, heretofore issued to GERARDO SERGIO GUTIERREZ, SR., 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 GERARDO SERGIO GUTIERREZ, SR., to the office of the Texas Board of Nursing.
2. RESPONDENT SHALL NOT practice vocational nursing, use the title "vocational nurse" or the abbreviation "LVN" or wear any insignia identifying himself as a vocational nurse or use any designation which, directly or

indirectly, would lead any person to believe that RESPONDENT is a vocational 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.

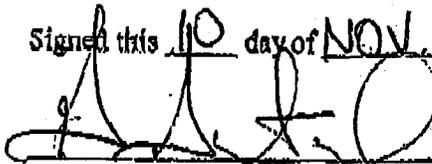
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**RESPONDENT'S CERTIFICATION**

I understand that I have the right to legal counsel prior to signing this Agreed Order. I 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.

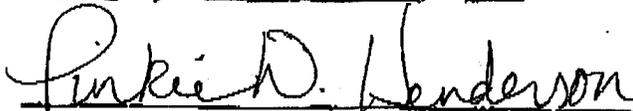
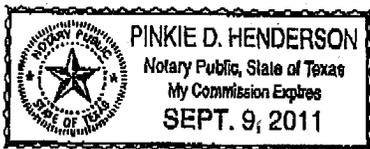
Signed this 10 day of NOV, 2008.



GERARDO SERGIO GUTIERREZ, SR., Respondent

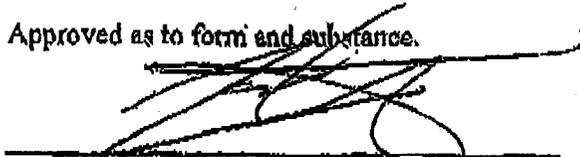
Sworn to and subscribed before me this 10<sup>th</sup> day of November, 2008

SEAL



Notary Public in and for the State of Texas

Approved as to form and substance.



LOUIS LEICHTER, Attorney for Respondent

Signed this 6 day of Nov, 2008

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Vocational Nurse License Number 191053, previously issued to GERARDO SERGIO GUTIERREZ, SR.

Effective this 12th day of November, 2008.



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

