IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
NUMBER 662275	§	COMMITTEE
ISSUED TO	§	OF THE
HOLLY ELIZABETH BROWN	§	TEXAS BOARD OF NURSING

TEXAS BOARD OF NURSING

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.

Executive Director of the Board

NUNC PRO TUNC ORDER OF THE BOARD

TO: Holly Elizabeth Brown
2118 Savannah Ct N.
League City, TX 77573

On June 8, 2010, during open meeting in Austin, Texas, an Order of the Board was entered for Holly Elizabeth Brown. However, the Order contained the incorrect effective date. Upon notice and hearing, administrative agencies, like the Courts, have the power to enter nunc pro tunc orders where it can be seen by reference to a record that what was intended to be entered, but was omitted by inadvertence or mistake, can be corrected upon satisfactory proof of its rendition provided that no intervening rights will be prejudiced. *Railroad Comm'n v. McClain*, 356 S.W.2d 330, 334 (Tex. App.--Austin 1962, no writ) (citing *Frankfort Ky. Nat. Gas Co. v. City of Frankfort*, 276 Ky. 199, 123 S.W.2d 270, 272).

The Executive Director, as agent of the Texas Board of Nursing, after review and due consideration of the record and the facts therein, invalidates the Order of the Board for Holly Elizabeth Brown that is dated June 9, 2010, and submits and enters the corrected Order of the Board, which contains the correct effective date. No other changes to the Order have been made. Ms. Brown received due process regarding her license; therefore, her rights have not been prejudiced.

NOW, THEREFORE, IT IS ORDERED that the corrected Order of the Board is hereby approved and entered on the dates set forth below.

Order effective June 8, 2010.

Entered this 23rd of April, 2012.

TEXAS BOARD OF NURSING

BY: _____

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

IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 662275	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
HOLLY ELIZABETH BROWN	§	BOARD OF NURSING

ORDER OF THE BOARD

TO: Holly Elizabeth Brown
#2 Rockdale Road
Kimberling City, Missouri 65686

During open meeting held in Austin, Texas, on June 8, 2010, 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 professional 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 662275, previously issued to HOLLY ELIZABETH BROWN, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice professional nursing in the State of Texas.

Entered this 8th day of June, 2010.

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 8th day of June, 2010, 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):

Holly Elizabeth Brown
#2 Rockdale Road
Kimberling City, Missouri 65686

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

BOARD OF NURSING
STATE OF TEXAS

IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 662275	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
HOLLY ELIZABETH BROWN	§	BOARD OF NURSING

ORDER OF THE BOARD

TO: Holly Elizabeth Brown
#2 Rockdale Road
Kimberling City, Missouri 65686

During open meeting held in Austin, Texas, on June 8, 2010, 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 professional 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 662275, previously issued to HOLLY ELIZABETH BROWN, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice professional nursing in the State of Texas.

Entered this 9th day of June, 2010.

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 8th day of June, 2010, 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):

Holly Elizabeth Brown
#2 Rockdale Road
Kimberling City, Missouri 65686

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

BOARD OF NURSING
STATE OF TEXAS

In the Matter of Permanent License	§	**BEFORE THE TEXAS**
Number 662275, Issued to	§	
HOLLY ELIZABETH BROWN, Respondent	§	**BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, HOLLY ELIZABETH BROWN, is a Registered Nurse holding license number 662275, which is in delinquent 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 February 3, 2006, Respondent entered a plea of guilty in the Circuit Court of Christian County, Missouri, to Felony Stealing, Case No. 05N8-CR00696-01. Respondent was issued an Order of Suspended Imposition of Sentence and she was placed on five (5) years probation with special conditions. On May 9, 2008, Respondent was granted early discharge from probation by the 38th Judicial Court, Christian County, Missouri.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(3)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(13).

CHARGE II.

On or about December 9, 2008, Respondent's license to practice professional nursing in the State of Missouri was placed on Probation until December 9, 2011, by the Missouri State Board of Nursing. Jefferson City, Missouri. A copy of the Findings of Fact, Conclusions of Law and a Disciplinary Order issued by the Missouri State Board of Nursing 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)(8)&(10), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to 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. and TEX. OCC. CODE Ch. 53. 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 Guidelines for Criminal Conduct and on Adopted Disciplinary Sanction Policies for Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, for Lying and Falsification, for Fraud, Theft & Deception, which can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

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: Disciplinary Order issued by the Missouri State Board of Nursing dated December 9, 2008.

Filed this 4th day of March, 20 10.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Renee Koslan Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Findings of Fact, Conclusions of Law And Disciplinary Order by the Missouri State Board of Nursing dated December 9, 2008.
0999/D

Matt Blunt
Governor
State of Missouri

David T. Broeker, Director
DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

STATE BOARD OF NURSING
P.O. BOX 656, Jefferson City, MO 65102-0656
800-735-2966 TTY Relay Missouri 800-735-2466 Voice Relay Missouri

Web Site: http://pr.mo.gov/nursing.asp

Lori Scheidt
Executive Director
Telephone: 573-751-0681

CERTIFICATION

I, Lori Scheidt, BS, Executive Director, of the Missouri State Board of Nursing certify that the document(s) which is/are attached is/are true and correct copy(s) of the information contained in the file of:

HOLLY ELIZABETH BROWN

Board Seal

Lori Scheidt /mm

Missouri State Board of Nursing
Lori Scheidt, BS
Executive Director
January 13, 2009

DOCUMENTS ATTACHED

Disciplinary Agreement(s)

BEFORE THE STATE BOARD OF NURSING
STATE OF MISSOURI

STATE BOARD OF NURSING,	)	
	)	
Petitioner,	)	
vs.	)	Case No. 2005-001363
	)	AHC Case No. 08-0264 BN
HOLLY BROWN,	)	
	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCIPLINARY ORDER

This Board filed a complaint with the Administrative Hearing Commission seeking authority to discipline the nursing license of Holly Brown. The Administrative Hearing Commission entered a decision in this case on August 15, 2008, finding cause for this Board to discipline the nursing license of Holly Brown. The Board convened a hearing on December 5, 2008 at its regular meeting in Jefferson City to determine what discipline, if any, should be imposed on Respondent's nursing license.

Respondent was not present for the hearing but was represented by attorney Joseph S. Passanise, via telephone conference. The Board was represented by Assistant Attorney General Joi Cunningham. Mikeal Louraine was present as legal advisor to the Board. Evidence was adduced, exhibits were received and the matter was taken under advisement. The Board now enters its findings of fact, conclusions of law and disciplinary order in this matter:

FINDINGS OF FACT

1. The State Board of Nursing (Board) is an agency of the State of Missouri created and established pursuant to § 335.021 RSMo for the purpose of executing and enforcing the provisions of Chapter 335 RSMo, the Nursing Practice Act.

2. Respondent is licensed by this Board as a registered professional nurse, license number RN 2002028261.

3. The Administrative Hearing Commission's decision is incorporated herein by reference as though fully set out.

CONCLUSIONS OF LAW

4. The Board has jurisdiction to discipline Respondent's license pursuant to the provisions of § 335.066.2 (1), (2), (5), (12) and (14) RSMo.

DISCIPLINARY ORDER

5. The Missouri State Board of Nursing enters its Order and places the nursing license of Respondent, Holly Brown, number RN 2002028261, on **PROBATION** for a period of three (3) years on the following terms and conditions:

GENERAL REQUIREMENTS

A. Respondent shall meet with the Board or its professional staff at such times and places as required by the Board. If Respondent does not receive notice of a meeting with the Board within one (1) month after the effective date of this Order, Respondent shall contact the Board office at: **Missouri State Board of Nursing, P.O. Box 656, Jefferson City, Missouri 65102, or by telephone at: (573) 751-0681.** If Respondent fails to contact the Board office after the one (1) month period has passed, the Board will presume that Respondent received notification of the date and time of his meeting with the Board. Failure of Respondent to receive a notice of a scheduled meeting does not excuse Respondent's non-attendance.

B. Respondent shall immediately submit documents showing compliance with the requirements of this Order to the Board when requested.

C. Respondent shall inform the Board within ten (10) days of any change of home address or home telephone number.

D. Respondent shall not violate the Nursing Practice Act, Chapter 335, RSMo, shall renew her license immediately and shall not allow her license to lapse. Respondent may place her license on inactive status. The conditions of discipline will continue to apply if the license is inactive.

E. Respondent shall keep the State Board of Nursing informed of her current place of employment and of any changes in her place of employment by notifying the Board within ten working days of such a change.

F. Respondent shall immediately advise any employer or potential employer of Respondent's probationary status and shall provide a copy of this entire Order to any employer or potential employer.

G. Respondent shall cause an evaluation form from each and every employer to be submitted to the Board at least quarterly, with due dates to be determined. The evaluation form shall be completed by Respondent's supervisor within a four-week period prior to the date it is due. If Respondent ends employment with an employer, Respondent shall, in addition, cause a final evaluation form from that supervisor to be submitted to the Board within a six-week period following the last day of employment.

H. The evaluation shall be an evaluation of Respondent's job performance using a form prescribed by the Board and shall be sent by the supervisor addressed to: State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102.

I. If Respondent is not employed at any time during the period of discipline, Respondent shall instead submit, at least two weeks prior to the due date, an affidavit stating the period(s) of unemployment.

J. Respondent shall execute any release or provide any other authorization necessary for the Board to obtain records of Respondent's employment during the period covered by this Order.

K. Respondent may not serve on the administrative staff, as a member of the faculty or as a preceptor at any accredited school of professional or practical nursing.

L. Respondent shall obey all federal, state and local laws, and all rules and regulations governing the practice of nursing in this state.

M. Respondent shall not carry narcotic keys or have access to automated dispensing devices which contain controlled substances.

N. Respondent shall not administer, possess, dispense or otherwise have access to controlled substances.

O. Respondent shall only work as a nurse at a facility where there is on-site supervision by another nurse or physician.

P. Respondent shall not work for a temporary employment agency or as an independent contractor.

Q. Respondent shall not work in home health care or durable medical equipment.

REQUIREMENTS REGARDING CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION

A. Respondent shall, within six (6) weeks from the effective date of this Order, undergo a thorough evaluation for chemical dependency performed by a licensed chemical dependency professional. The chemical dependency professional shall submit to the Board evidence that he or she is licensed or certified in the treatment of chemical dependency. Respondent shall show this Order to the chemical dependency professional before the evaluation is performed.

B. Respondent shall have the chemical dependency professional mail the results of the evaluation directly to the State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102 within ten (10) working days after the evaluation is complete.

C. Each written evaluation shall include:

1. A description of the tests performed and test results;
2. Discussion of relevant clinical interview findings/interpretations;
3. Specification of DSM IV diagnosis/es, and discussion of appropriate treatment recommendations/plan.
4. Discussion of appropriate treatment recommendations/plan. If there is no diagnosis requiring treatment, this should be specified in the evaluation.

D. If Respondent has undergone a thorough evaluation for chemical dependency in the last year, she may submit that evaluation to the Board in lieu of a new evaluation. The decision on whether or not to accept that evaluation in lieu of the requirements listed above in paragraph A shall lie entirely with the Board.

IF TREATMENT IS NOT RECOMMENDED

A. If the chemical dependency professional determines that treatment is not recommended, Respondent shall execute a release so that the Board can obtain the evaluation and supporting documents.

B. During the disciplinary period, Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of Respondent's discipline.

C. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona-fide relationship as a patient.

D. Upon request, Respondent shall execute a medical release authorizing the Board to access all records pertaining to Respondent's condition, treatment and prescription(s) maintained by the health care professional that prescribed the controlled substance.

E. The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription shall constitute a violation of Respondent's discipline.

F. Respondent shall provide the Board with documentation of any prescription upon request.

IF TREATMENT IS RECOMMENDED

A. Respondent shall follow any recommendations for treatment made by the chemical dependency professional.

B. Respondent shall execute a medical release or other appropriate release which shall remain in effect for the entire period covered by this Order authorizing the State Board of Nursing to obtain records of Respondent's treatment for chemical dependency. Respondent shall not take any action to cancel this release. Respondent shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.

C. Respondent shall cause an update of treatment evaluation from the chemical dependency professional to be submitted to the Board at least quarterly, with due dates to be determined.

(1) The update shall be submitted using a form prescribed by the Board and shall be sent by the chemical dependency professional addressed to: State Board of Nursing, ATTN: Discipline Administrator, P.O. Box 656, Jefferson City, Missouri 65102.

(2) The update shall include an evaluation of Respondent's current progress and status related to the treatment recommendations/plan and Respondent's current prognosis and treatment recommendations/plan.

D. During the disciplinary period, Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of Respondent's discipline.

E. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona-fide relationship as a patient. Upon request, Respondent shall execute a medical

release authorizing the Board to access all records pertaining to Respondent's condition, treatment and prescription(s) maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription shall constitute a violation of Respondent's discipline.

F. Respondent shall inform any professional preparing a prescription for Respondent that Respondent is chemically dependent.

G. Respondent shall provide the Board with documentation of any prescription upon request.

H. If a twelve-step program or other support group attendance is recommended, Respondent shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous or other support group meetings to the Board at such times as required by the Board, but not less than quarterly. The documentation shall be on forms provided by the Board and shall include the date and name of the meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

I. If the treatment of Respondent is successfully completed at any time during the period covered by this Order, Respondent shall cause the chemical dependency professional to submit a letter of final evaluation/summary which includes a statement that Respondent has successfully completed treatment and indicates whether Respondent should continue in a 12-step program. If continuance in a 12-step program is recommended, Respondent shall comply with terms of documentation as outlined in Paragraph H.

DRUG SCREENS

A. The conditions of this section apply to the Respondent regardless of whether or not chemical dependency treatment is recommended by the chemical dependency evaluation.

B. Respondent shall contract with the Board approved third party administrator (TPA) to schedule random witnessed screening for alcohol and other drugs of abuse or serum screening for alcohol or other drugs of abuse, the frequency of which shall be at the Board's discretion. The random urine/serum screens shall be at the expense of Respondent.

C. Within twenty (20) working days of the effective date of this Order, Respondent shall complete the TPA's urine drug screen packet and submit the completed contract to the TPA.

D. Failure of Respondent to comply with Respondent's contract with the TPA shall result in a violation of the terms of discipline.

6. The Board will maintain this Order as an open and public record of the Board as provided in Chapters 335, 610 and 620, RSMo. The Board will report this Order to data banks, other appropriate entities and in its newsletter. This is a disciplinary action against Respondent's license. The original of this document shall be kept in the Board's file and its contents shall be disclosed to the public upon proper request.

7. Upon the expiration of said discipline, Respondent's license as a registered professional nurse in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Respondent.

8. No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

9. If the Board determines that Respondent has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Order occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a

violation occurred and, if so, it may impose further discipline. The Board retains continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

Entered this 9th day of December 2008.

STATE BOARD OF NURSING

Lori Scheidt

Lori Scheidt
Executive Director

Before the
Administrative Hearing Commission
State of Missouri

STATE BOARD OF NURSING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 08-0264 BN
	)	
HOLLY BROWN,	)	
	)	
Respondent.	)	

DECISION

Holly Brown is subject to discipline because she stole 29 vials of a controlled substance from her employer for her personal use and because she pled guilty to felony stealing.

Procedure

On February 1, 2008, the State Board of Nursing ("the Board") filed a complaint seeking to discipline Brown. Before February 15, 2008,[1] we served Brown with a copy of the complaint and our notice of hearing/notice of complaint by certified mail. Brown did not file an answer. On July 21, 2008, the Board filed a motion for summary determination. Our Regulation 1 CSR 15-3.440(3) provides that we may decide this case without a hearing if the Board establishes facts that (a) Brown does not dispute and (b) entitle the Board to a favorable decision.

The Board cites the request for admissions that was served on Brown on May 20, 2008. Brown did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a

[1]The certified mail receipt does not show a date of receipt, but was filed with this office on February 15, 2008.

request for admissions establishes the matters asserted in the request, and no further proof is required.[2] Such a deemed admission can establish any fact or any application of law to fact.[3] That rule applies to all parties, including those acting *pro se*.[4] Section 536.073[5] and our Regulation 1 CSR 15-3.420(1) apply that rule to this case.

We gave Brown until August 4, 2008, to respond to the motion, but she did not respond by that date. She responded on August 15, 2008, stating that she does not contest the facts of this case.

Findings of Fact

1. Brown was licensed by the Board as a registered professional nurse at all relevant times. Her license lapsed on April 30, 2007.

2. From June 28, 2004, to March 7, 2005, Brown was employed by St. John's Clinic ("St. John's") in Ozark, Missouri.

3. On March 3, 2005, Brown had a key to the locked narcotic cabinet at St. John's.

4. On March 3, 2005, a controlled drug count was conducted of the locked narcotics cabinet at St. John's, showing a total of 975 milligrams (mg) of Demerol – ten 50 mg/ml vials and nineteen 25 mg/ml vials.

5. Demerol (meperidine) is a controlled substance.[6]

6. During the time period of March 3, 2005, to March 7, 2005, Brown stole the 975 mg of Demerol from St. John's locked narcotics box. She diverted the Demerol for her personal use.

7. Brown did not have a valid prescription for Demerol.

---

[2] ***Killian Constr. Co. v. Tri-City Constr. Co.***, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).
[3] ***Linde v. Kilbourne***, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).
[4] ***Research Hosp. v. Williams***, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).
[5] RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2007.
[6] Section 195.017.4(2)(q).

8. On March 7, 2005, Brown approached the nurse manager of St. John's, Sheri Hursman, and admitted that she had taken all of the Demerol from St. John's locked narcotics cabinet.

9. Brown voluntarily resigned her position at St. John's.

10. After Brown left St. John's, Hursman went to the locked narcotics cabinet to inventory the Demerol. She verified that Brown had stolen the Demerol.

11. On August 3, 2005, in the Circuit Court of Christian County, Missouri, Brown was charged with the Class C felony of stealing.

12. On December 16, 2005, Brown entered a plea of guilty in the Circuit Court of Christian County, Missouri, to felony stealing for appropriating Demerol without the consent of St. John's between March 3, 2005, and March 7, 2005. The court accepted her plea of guilty, suspended the imposition of sentence, and placed Brown on five years' probation with special conditions.

Conclusions of Law

We have jurisdiction to hear this complaint.[7] The Board has the burden of proving that Brown has committed an act for which the law allows discipline.[8]

The Board argues that there is cause for discipline under § 335.066:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:
>
> (1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent

[7]Section 621.045.
[8]***Missouri Real Estate Comm'n v. Berger***, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

(2) The person has been finally adjudicated and found guilty, or entered a plea guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence;

* * *

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

I. Subdivisions (1) and (14) – Drug Possession

Section 195.202.1[9] states:

> Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Brown admitted that she possessed a controlled substance, Demerol, without a valid prescription. Therefore, she violated § 195.202.1.[10]

In its complaint, the Board specifically states that Brown's possession of Demerol is cause for discipline only under § 335.066.2(1). But because the Board cited subdivision (14) in

[9]RSMo 2000.
[10]RSMo 2000.

the complaint, we find that Brown was given sufficient notice that her conduct – possessing the Demerol – might also subject her to discipline under subdivision (14).

Brown's unlawful possession of a controlled substance is cause for discipline under § 335.066.2(1). Her possession of a controlled substance without a prescription violated § 195.202.1, a drug law, and is cause for discipline under § 335.066.2(14).

II. Subdivision (2) and (14) – Felony Stealing

The Board argues that Brown's plea of guilty to felony stealing is cause for discipline under § 335.066.2(2) and (14).

Section 570.030 sets forth the crime of stealing:

> 1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.
>
> * * *
>
> 3. Notwithstanding any other provision of law, any offense in which the value of property or services is an element is a class C felony if:
>
> * * *
>
> (3) The property appropriated consists of:
>
> * * *
>
> (k) Any controlled substance as defined by section 195.010, RSMo[.]

A. Subdivision (2)

The Board argues that felony stealing is a crime involving moral turpitude and an offense an essential element of which is dishonesty.

1. Moral turpitude

Moral turpitude is:

> an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."[11]

In ***Brehe v. Missouri Dep't of Elementary and Secondary Education***,[12] a case that involved discipline of a teacher's certificate under § 168.071[13] for committing a crime involving moral turpitude, the court referred to three classifications of crimes:[14]

(1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);

(2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and

(3) crimes that "may be saturated with moral turpitude," yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

The court stated that Category 3 crimes require consideration of "the related factual circumstances" of the offense to determine whether moral turpitude is involved.[15] In order to determine whether a crime is a Category 1 or 3 crime, the court looked at crimes for which discipline was mandated under § 168.071, which include murder, rape, and child endangerment

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[11] ***In re Frick***, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting ***In re Wallace***, 19 S.W.2d 625 (Mo. banc 1929)).

[12] 213 S.W.3d 720 (Mo. App., W.D. 2007). While we realize that the ***Brehe*** court made its decision based on the teacher discipline statute that mandated discipline in some cases, and made it discretionary in others, we find the analysis compelling. If every crime is a crime involving moral turpitude, the "moral turpitude" language is superfluous. The distinction the court made between the types of crimes gives us guidance and finds support in other courts' decisions.

[13] RSMo Supp. 2007.

[14] ***Brehe***, 213 S.W.3d at 725 (quoting ***Twentieth Century-Fox Film Corp. v. Lardner***, 216 F.2d 844, 852 (9th Cir. 1954)).

[15] *Id.*

in the first degree. But the court determined that the crime the teacher committed, child endangerment in the second degree, was a Category 3 crime, and that the Department of Elementary and Secondary Education must show the circumstances surrounding the commission of the crime. The court stated:

> The legislature restricted the Board's [of Education] authority to discipline so that the Board could discipline only for the commission of a felony or an offense "involving moral turpitude." The Board could discipline when the offense *necessarily* involves moral turpitude (as in the case of a category 1 crime). The board could also exercise discipline when the related circumstances are such as to demonstrate actual moral turpitude (in the case of a category 3 crime). The Department was not precluded in this case from showing any circumstances indicating that Ms. Brehe was guilty of moral turpitude. The Department did not do so.[16]

Our review of other cases convinces us that stealing is a Category 1 crime.[17] Therefore, we find without further analysis that stealing is a crime involving moral turpitude. We find cause for discipline under § 335.066.2(2).

2. Essential Element

An essential element is one that must be proven for a conviction in every case.[18] Dishonesty is a lack of integrity or a disposition to defraud or deceive.[19] We find that stealing is a crime an essential element of which is dishonesty. There is cause for discipline under § 335.066.2(2).

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[16] ***Brehe***, 213 S.W.3d at 727.

[17] *See* ***In re Carpenter***, 891 A.2d 223 (D.C. 2006) (moral turpitude is inherent in crimes that have an intent to defraud or steal). *See also* ***U.S. v. Morrow***, 2005 WL 3163801 (D.D.C. June 2, 2005) and ***Johnson v. Commonwealth***, 581 S.E.2d 880 (41 Va. App., 2003) (misdemeanor crimes of moral turpitude are limited to those involving lying, cheating, and stealing).

[18] ***State ex rel. Atkins v. Missouri Bd. of Accountancy***, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

[19] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

B. Subdivision (14)

Section 335.066.2(14) authorizes discipline for violation of a drug law.[20] We found cause for discipline under this subdivision for violating § 195.202.1.[21] In order to find cause for discipline under subdivision (14) for violation of § 570.030, we must determine whether the law making stealing a crime is a drug law.

What is considered a drug law is not defined in the licensing context. Chapter 195, entitled "Drug Regulations" defines "drug laws" as:

> all laws regulating the production, sale, prescribing, manufacturing, administering, transporting, having in possession, dispensing, distributing, or use of controlled substances, as defined in section 195.010[.[22]]

Although one of the categories of felony stealing involves controlled substances, this does not make the crime of stealing a drug law. The crime of "stealing" is described in very general language, and the specific examples, such as stealing a controlled substance, determine the class of the crime.

In determining whether a crime was a drug law, a Colorado court looked at the way its legislature characterized the crime. In ***Wilczynski v. State***,[23] a "driving under the influence" conviction was not a drug law conviction based on the placement of the law with vehicular offenses rather than in the Health and Safety Code where drug related offenses were codified. In Missouri, the crime of stealing is not codified with other drug related offenses, but appears in Chapter 570, entitled "Stealing and Related Offenses." It appears clear that, while drugs are

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[20]Section 335.066.2(14) does not require proof of a guilty plea or conviction, but proof that the drug law was violated.

[21]RSMo 2000.

[22]Section 195.503(3).

[23]891 P.2d 998 (Colo. banc 1995).

among things that one could steal, stealing is a broader crime than what is categorized as a drug law. There is no cause for discipline under § 335.066.2(2) for violation of § 570.030 because stealing is not a drug law.

III. Subdivision (5) – Incompetence, Misconduct and Gross Negligence

The Board argues that Brown's conduct constitutes incompetence, misconduct, and gross negligence in the performance of her functions or duties as a registered professional nurse.

When referring to an occupation, incompetence relates to the failure to use "the actual ability of a person to perform in that occupation."[24] It also refers to a general lack of, or a lack of disposition to use, a professional ability.[25] Misconduct means "the willful doing of an act with a wrongful intention[;] intentional wrongdoing."[26] Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.[27]

Brown admitted that her conduct constituted incompetence, misconduct and gross negligence. We agree that stealing a large quantity of Demerol from her employer was both incompetence and misconduct. We do not accept her admission that it constitutes gross negligence. Despite Brown's deemed admission, the General Assembly and the courts instruct that we must we must:

> make an independent assessment of the facts to determine whether cause for disciplining a licensee exists . . . . But this impartiality would be compromised if the determination of cause was not a separately and independently arrived at determination by the Hearing Commission.[[28]]

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[24]Section 1.020(8), RSMo 2000.

[25]***Johnson v. Mo. Bd. of Nursing Adm'rs***, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004); ***Forbes v. Missouri Real Estate Comm'n***, 798 S.W.2d 227, 230 (Mo. App., W.D. 1990).

[26]***Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan***, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

[27]*Id.* at 533.

[28]***Kennedy v. Missouri Real Estate Comm'n***, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

Because the mental states for misconduct and gross negligence are mutually exclusive, we find no cause to discipline for gross negligence. Brown is subject to discipline under § 335.066.2(5) for misconduct and incompetence.

IV. Subdivision (12) – Violate Professional Trust

The Board argues that Brown's conduct violated the relationship of professional trust or confidence with Brown's employer, St. John's, and St. John's patients. Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.[29] It may exist not only between the professional and her clients, but also between the professional and her employer and colleagues.[30]

We agree that stealing Demerol from her employer that was meant for patients violated the relationship of professional trust she had with those patients, her employer, and her colleagues. Brown is subject to discipline under § 335.066.2(12) for violation of professional trust.

Summary

There is cause for discipline under § 335.066.2(1), (2), (5), (12) and (14). We cancel the hearing.

SO ORDERED on August 15, 2008.

JOHN J. KOPP
Commissioner

[29] ***Trieseler v. Helmbacher***, 168 S.W.2d 1030, 1036 (Mo. 1943).
[30] ***Cooper v. Missouri Bd. of Pharmacy***, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).