

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse § AGREED  
License Number 246343 §  
issued to JOSEPHINE ANN GABBERT § ORDER



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.  
*Patricia P. Thomas*  
Executive Director of the Board

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 246343, issued to JOSEPHINE ANN GABBERT, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c) of the Texas Occupations Code.

Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was 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 representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent currently holds a license to practice professional nursing in the State of Texas, which is in delinquent status.
4. Respondent received a Baccalaureate Degree in Nursing from Mary Hardin - Baylor College, Belton, Texas, on May 1, 1978. Respondent was licensed to practice professional nursing in the State of Texas on March 28, 1979.
5. Respondent's nursing employment history is unknown:

6. On or about December 26, 2008, Respondent submitted a License Renewal Form (Delinquent for over 90 days) to the Texas Board of Nursing in which she answered "Yes" to the question:

"Have you, within the past 24 months or since your last renewal, for any criminal offense, including those pending appeal:

- A. been convicted of a misdemeanor?
- B. been convicted of a felony?
- C. pled nolo contendere, no contest, or guilty?
- D. received deferred adjudication?
- E. been placed on community supervision or court-ordered probation, whether or not adjudicated guilty?
- F. been sentenced to serve jail or prison time? court-ordered confinement?
- G. been granted pre-trial diversion?
- H. been arrested or have any pending criminal charges?
- I. been cited or charged with any violation of the law?
- J. been subject of a court-martial; Article 15 violation; or received any form of military judgement/punishment/action?"

Respondent disclosed that on or about November 15, 2007, Respondent was arrested by the Bexar County Sheriff's Office, San Antonio, Texas for FRAUD POSS CS/ PRESCRIPTION SCH III/ IV (a 3rd Degree felony offense).

On or about January 20, 2009, Respondent entered a plea of Nolo Contendere to OBTAIN DRUGS BY FRAUD - SCH III/ (a 3rd Degree felony offense committed on July 24, 2007), in the 175th District Court of Bexar County, Texas under Cause No. 2007CR9697. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of two (2) years. Additionally, Respondent was ordered to pay a fine and court costs.

7. In Response to Finding of Fact Number Six (6), Respondent states: She was arrested, but not convicted of the offense. She states she turned herself in to the police.
8. On or about December 26, 2008, Respondent submitted a License Renewal Form (Delinquent for over 90 days) to the Texas Board of Nursing in which she answered "Yes" to the question:

"In the past 5 years, have you been addicted or treated for the use of alcohol or any other drug?"

9. In response to Finding of Fact Number Eight (8), Respondent states: She began having back pain in December 2002 and eventually had surgery to remove a tumor and laminectomy/fusion of L 3-5. She states she was on pain medication due to severe pain in back and legs and nerve damage. Respondent states she recognized she had a problem and began weaning herself from the pain medications and stopped all pain medication on July 31, 2007 and her abstinence date is August 1, 2007. Respondent states she did not go to a treatment center and stopped on her own. She states she started going to NA meetings six months later, January 2008, because she could not afford outpatient treatment. Respondent states on August 29, 2008, she fell from her roof and fractured her heel, distal tibia and two (2) places on her foot and as a result, was unable to attend NA meeting or get drug screens until December 8, 2008. Respondent states she presently attends two (2) to three (3) meetings a week and pays for drugs screens.
10. 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.
11. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.
12. Respondent, by her signature to this Order, expresses her desire to voluntarily surrender her license to practice nursing in the State of Texas.

#### 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)(3),(10)&(12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(5),(10)(E)&(13).
4. The evidence received is sufficient cause pursuant to Section 301.453(a), Texas Occupations Code, to take disciplinary action against Registered License Number 246343, heretofore issued to JOSEPHINE ANN GABBERT, 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 Registered License Number 246343, heretofore issued to JOSEPHINE ANN GABBERT, 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 JOSEPHINE ANN GABBERT, to the office of the Texas Board of Nursing.
2. RESPONDENT SHALL NOT practice professional nursing, use the title "registered nurse" or the abbreviation "RN" or wear any insignia identifying herself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
3. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order.
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 nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

RESPONDENT'S CERTIFICATION

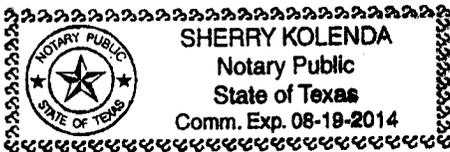
I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and 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 11 day of August, 2010.

Josephine Ann Gabbert  
JOSEPHINE ANN GABBERT, Respondent

Sworn to and subscribed before me this 11 day of August, 2010

SEAL



Sherry Kolenda  
Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Registered Nurse License Number 246343, previously issued to JOSEPHINE ANN GABBERT.



Effective this 16 day of August, 20 10.

*Katherine A. Thomas*

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