IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 242869	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
MICHAEL LYNN UPCHURCH	§	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

ORDER OF THE BOARD

TO: Michael Lynn Upchurch
PO BOX 560987
The Colony, Texas 75056

During open meeting held in Austin, Texas, on June 14, 2011, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, 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

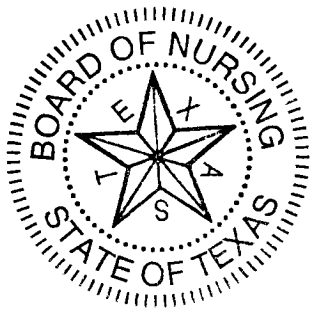
proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(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 242869, previously issued to MICHAEL LYNN UPCHURCH, 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 14th day of June, 2011.



TEXAS BOARD OF NURSING

BY: _____

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

Attachment: Formal Charge filed April 27, 2011.

Re: Permanent Certificate Number 242869
Issued to MICHAEL LYNN UPCHURCH
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of June, 2011, 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):

MICHAEL LYNN UPCHURCH
PO Box 560987
The Colony, Texas 75056

BY: Katherine A. Thomas

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

In the Matter of Permanent License	§	**BEFORE THE TEXAS**
Number 242869, Issued to	§	
MICHAEL LYNN UPCHURCH, Respondent	§	**BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MICHAEL LYNN UPCHURCH, is a Registered Nurse holding license number 242869, 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 November 9, 2010, Respondent failed to comply with the Agreed Order issued to him by the Texas Board of Nursing, on July 13, 2010. Respondent's noncompliance is the result of his 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 November 9, 2010, Respondent was dismissed from the TPAPN program and referred to the Board, due his failure to comply with drug testing and monitoring requirements; failure to provide confirmation that he had been admitted to the recommended treatment program; and for being past due on providing healthcare provider evaluations.

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).

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 Nursing Practice Act, Chapter 301, Texas Occupations Code and 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 Section 301.461, Texas Occupations Code. 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 Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder, 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: Agreed Order dated July 13, 2010.

Filed this 27th day of April, 2011.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena 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
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
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: Order of the Board dated July 13, 2010

D/2010.12.28

BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Registered Nurse	§	AGREED
License Number 242869	§	
issued to MICHAEL LYNN UPCHURCH	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MICHAEL LYNN UPCHURCH, Registered Nurse License Number 242869, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9),(10)(&(13), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on May 28, 2010, by Katherine A. Thomas, MN, RN, Executive Director.

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 representation by counsel, informal proceedings, 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 Cooke County Junior College, Gainesville, Texas on May 1, 1977. Respondent was licensed to practice professional nursing in the State of Texas on March 21, 1978.

5. Respondent's professional nursing employment history is unknown.

6. On or about September 27, 2007, through October 25, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent withdrew Norco from the Pyxis Medication Dispensing System for patients, but failed to completely and accurately document the administration of the medication in the patients' Medication Administration Records (MARs) and/or Nurses Notes as follows:

Date/ Time	Patient #	Medication Withdrawn	Physician's Order	MAR	Nurses Notes	Wastage	Additional Information
9/27/07 15:01	TP 043719566	(2) Hydrocodone 5/325 tab	None	None	None	None	Pt. Admitted 15:30..order written for Vicodin @ 16:30 none for Norco
10/11/07 16:50	DW 043736206	(2) Hydrocodone 5/325 tab	None	None	None	None	Patient D/Cd 10/10/07 @ 22:12
10/25/07 15:36	MG 043757475	(2) Hydrocodone 5/325 tab	None	None	None	None	Pt. transferred from ED 12:41

Respondent's conduct was likely to injure the patients in that subsequent care givers would rely on her documentation to further medicate the patient which could result in an overdose.

7. On or about September 27, 2007, through October 25, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent withdrew Norco from the Pyxis Medication Dispensing System for patients, but failed to follow the policy and procedure for the wastage of the medication as follows:

Date/ Time	Patient #	Medication Witndrawn	Physician's Order	MAR	Nurses Notes	Wastage	Additional Information
9/27/07 15:01	TP 043719566	(2) Hydrocodone 5/325 tab	None	None	None	None	Pt. Admitted 15:30..order written for Vicodin @ 16:30 none for Norco
10/11/07 16:50	DW 043736206	(2) Hydrocodone 5/325 tab	None	None	None	None	Patient D/Cd 10/10/07 @ 22:12
10/25/07 15:36	MG 043757475	(2) Hydrocodone 5/325 tab	None	None	None	None	Pt. transferred from ED 12:41

Respondent's conduct was likely to deceive the hospital pharmacy and placed them in violation of Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act).

8. On or about September 27, 2007, through October 25, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent withdrew Norco from the Pyxis Medication Dispensing System for patients that did not have a physician's order for the medication as follows:

Date/ Time	Patient #	Medication Withdrawn	Physician's Order	MAR	Nurses Notes	Wastage	Additional Information
9/27/07 15:01	TP 043719566	(2) Hydrocodone 5/325 tab	None	None	None	None	Pt. Admitted 15:30..order written for Vicodin @ 16:30 none for Norco
10/11/07 16:50	DW 043736206	(2) Hydrocodone 5/325 tab	None	None	None	None	Patient D/Cd 10/10/07 @ 22:12
10/25/07 15:36	MG 043757475	(2) Hydrocodone 5/325 tab	None	None	None	None	Date/ Time

Respondent's conduct was likely to injure the patients in that the administration of Hydrocodone without a valid physician's order could result in the patient suffering from adverse reactions.

9. On or about September 27, 2007, through October 25, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent misappropriated Norco belonging to the facility and patients thereof, or failed to take precautions to prevent such misappropriation. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.

10. On or about December 12, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent engaged in the intemperate use of Oxazepam, in that he produced a specimen for drug screening which resulted positive for Oxazepam. Possession of Oxazepam is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Oxazepam 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.

11. On or about December 19, 2007, while employed with Lake Pointe Medical Center, Rowlett, Texas, Respondent engaged in the intemperate use of Oxazepam, in that he produced a specimen for drug screening which resulted positive for Oxazepam. Possession of Oxazepam is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Oxazepam 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.

12. In response to Findings of Fact Numbers Ten (10) and Eleven (11), Respondent states the he believes that Oxazepam was given to him while he was an inpatient at Valley Hope-Grapevine.

13. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.

14. 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.

15. Respondent's conduct described in Findings of Fact Numbers Six (6), through Eleven (11) was significantly influenced by Respondent's dependency on chemicals.

16. 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 violation of Section 301.452(b)(9),(10)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.11(1)(A),(B),(C),(D)&(T)(effective through November 15, 2007) and §217.12(1)(A),(1)(B),(1)(C),(1)(E),(4),(5),(6)(G),(10)(A),(10)(C),(10)(D)&(11)(B).

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 242869, heretofore issued to MICHAEL LYNN UPCHURCH, including revocation of Respondent's license to practice 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 TPAPN and SHALL, within ninety (90) days following the date of entry of this final Order, sign and execute the TPAPN participation agreement, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term and SHALL keep his license to practice nursing in the State of Texas current.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, Section §§301.001 *et seq.*,

the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq*. and this Order.

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.

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 Texas Board of Nursing 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 EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

BALANCE OF PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

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. 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 Texas Board of Nursing, 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 25 day of June, 2010.

MICHAEL LYNN UPCHURCH, Respondent

Sworn to and subscribed before me this 25 day of June, 2010.

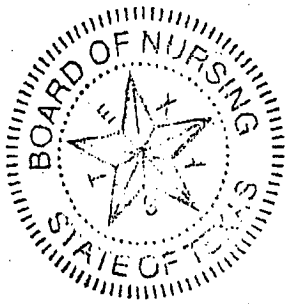
SEAL

Laurie A. Cushing

Notary Public in and for the State of New Hampshire

LAURIE A. CUSHING, Notary Public
My Commission Expires April 5, 2011

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 25th day of June, 2010, by MICHAEL LYNN UPCHURCH, Registered Nurse License Number 242869, and said Order is final.



Entered and effective this 13th day of July, 2010.

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