

IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 156056  
ISSUED TO  
DAVID RAY MACKIE

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BEFORE THE ELIGIBILITY  
AND DISCIPLINARY  
COMMITTEE  
OF THE 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.  
*Patricia A. Roman*  
Executive Director of the Board

**ORDER OF THE BOARD**

TO: David Ray Mackie  
108 Forest Drive  
Willis, Texas 77378

During open meeting held in Austin, Texas, on May 10, 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 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 § 213.16(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 156056, previously issued to DAVID RAY MACKIE, to practice vocational 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 vocational nursing in the State of Texas.

Entered this 10<sup>th</sup> day of May, 2011.

TEXAS BOARD OF NURSING

BY:



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

Attachment: Formal Charge filed February 22, 2011.

CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of May, 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):

David Ray Mackie  
108 Forest Drive  
Willis, Texas 77378

BY:



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

**In the Matter of Permanent License** § **BEFORE THE TEXAS**  
**Number 156056, Issued to** §  
**DAVID RAY MACKIE, Respondent** § **BOARD OF NURSING**

### **FORMAL CHARGES**

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DAVID RAY MACKIE, is a Vocational Nurse holding license number 156056, 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 November 17, 2010, while holding a license as a vocational nurse in the State of Texas, Respondent became non-compliant with the Agreed Order issued to Respondent by the Texas Board of Nursing on August 16, 2010. Non-compliance is the result of Respondent's failure to complete the TPAPN enrollment process, including the drug testing registration for the Texas Peer Assistance Program for Nurse (TPAPN). Stipulation numbers one (1) and three (3) of the Agreed Order dated August 16, 2010 , states:

"(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 three hundred fifty dollars (\$350.00) payable to TPAPN. "

"(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."

A copy of the Agreed Order issued to Respondent by the Texas Board of Nursing on August 16, 2010 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 22 TEX. ADMIN. CODE §217.12(9).

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](http://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](http://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](http://www.bon.state.tx.us/disciplinaryaction/discp-matrix.html).

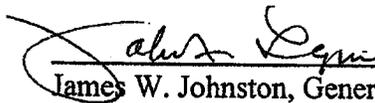
NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order issued to Respondent by the Texas Board of Nursing on August 16, 2010.

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Filed this 22nd day of February, 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: Agreed Order issued to Respondent by the Texas Board of Nursing on August 16, 2010.

D/2010.12.28

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	AGREED
License Number 156056	§	
issued to DAVID RAY MACKIE	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of DAVID RAY MACKIE, Vocational Nurse License Number 156056, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on July 12, 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 vocational nursing in the State of Texas.
4. Respondent received a Diploma in Vocational Nursing from St. Phillips College, San Antonio, Texas on December 14, 1995. Respondent was licensed to practice vocational nursing in the State of Texas on January 25, 1996.
5. Respondent's complete vocational nursing employment history is unknown.

6. At the time of the incident described in Finding of Fact Number Seven (7), Respondent was employed as a Vocational Nurse with Tomball Regional Medical Center, Tomball, Texas, and had been in this position for approximately three (3) years and one (1) month.
7. On or about August 19, 2008, while employed as a Licensed Vocational Nurse, with Tomball Regional Medical Center, Tomball, Texas, Respondent engaged in the intemperate use of Alcohol in that he smelled of Alcohol and Respondent produced a Serum blood screen that resulted positive (197.4 mg/dl) for Alcohol. The use of alcohol by a Licensed Vocational 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.
8. 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.
9. 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.
10. In response to Finding of Fact Number Seven (7), Respondent states that he almost had a vehicle accident on the way to work and it upset him so he stopped and consumed alcohol. Respondent stated that he did not realize that his employer could smell the alcohol.
11. Respondent's conduct described in Finding of Fact Number Seven (7) was significantly influenced by Respondent's impairment by dependency on chemicals.
12. 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), Texas Occupations Code and 22 TEX. ADMIN. CODE §217.12(5)&(10)(A).

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 156056, heretofore issued to DAVID RAY MACKIE, 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 three hundred fifty dollars (\$350.00) 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.

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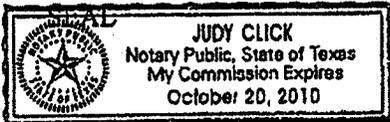
RESPONDENT'S CERTIFICATION

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 violation 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(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 2 day of August, 2010.

David Ray Mackie  
DAVID RAY MACKIE, Respondent

Sworn to and subscribed before me this 2 day of August, 2010.



Judy Click  
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 and enter the Agreed Order that was signed on the 2<sup>nd</sup> day of August, 2010, by DAVID RAY MACKIE, Vocational Nurse License Number 156056, and said Order is final.



Entered and effective this 16<sup>th</sup> day of August, 2010.

*Katherine A. Thomas*

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