BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	AGREED
License Number 88178	§	
issued to CYNTHIA D. POWELL	§	ORDER

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

On this day, the Texas Board of Nursing, hereinafter referred to as the Bo accepted the voluntary surrender of Vocational Nurse License Number 88178, issued to CYNTHIA D. POWELL, 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(s).

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 Certificate in Vocational Nursing from San Jacinto College, Pasadena, Texas, on June 4, 1980 . Respondent was licensed to practice vocational nursing in the State of Texas on October 21, 1980.

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

6. On or about January 16, 2009, Respondent was issued an Agreed Order by the Texas Board of Nursing requiring her to participate in the Texas Peer Assistance Program for Nurses (TPAPN).. A copy of the January 16, 2009 Agreed Order, Findings of Fact, and Conclusions of Law, is attached and incorporated, by reference, as part of this Order.

7. On or about June 23, 2010, Respondent failed to comply with the Agreed Order issued to her by the Texas Board of Nursing on January 16, 2009. Respondent's non-compliance was her failure to comply with Stipulation Number Three (3) which reads:

   "RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term....".

   Specifically, Respondent had diluted drug screens on May 28, 2009, June 3, 2009, September 18, 2009, and May 12, 2010. Additionally, Respondent failed to obtain steady employment as a vocational nurse in that she began employment on March 28, 2010 and subsequently resigned this position on April 20, 2010.

8. Respondent, by her signature to this Order, expresses her desire to voluntarily surrender her license(s) to practice vocational nursing in the State of Texas.

9. 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.

10. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Section 301.452(b)(1)&(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(9)&(11)(B).

4. The evidence received is sufficient cause pursuant to Section 301.453(a), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 88178, heretofore issued to CYNTHIA D. POWELL, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

5. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

6. Under Section 301.453(d), Texas Occupations Code, as amended, the Board may impose conditions for reinstatement of licensure.

7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the VOLUNTARY SURRENDER of Vocational License Number 88178, heretofore issued to CYNTHIA D. POWELL, 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 NOT practice vocational nursing, use the title "vocational nurse" or the abbreviation "LVN" or wear any insignia identifying herself as a vocational nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a vocational nurse during the period in which the license is surrendered.

2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order.

3. 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.

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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 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 25 day of August, 2010.

Cindy Powell

CYNTHIA D. POWELL, Respondent

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

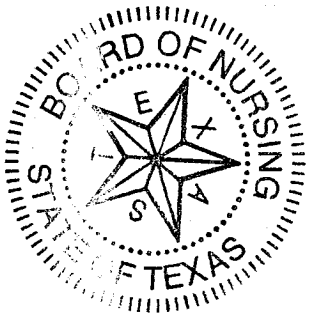
SEAL

Annette White

Notary Public in and for the State of Texas

ANNETTE L. WHITE
MY COMMISSION EXPIRES
May 18, 2013

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Vocational Nurse License Number 88178, previously issued to CYNTHIA D. POWELL.



Effective this 1st day of September, 2010.

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

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	AGREED
License Number 88178	§	
issued to CYNTHIA D. POWELL	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of CYNTHIA D. POWELL, Vocational Nurse License Number 88178, 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 December 8, 2008, 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 Certificate in Vocational Nursing from San Jacinto College, Pasadena, Texas, on June 4, 1980 . Respondent was licensed to practice vocational nursing in the State of Texas on October 21, 1980.

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

6. At the time of the incident, Respondent was employed as a Licensed Vocational Nurse with Weston Inn Health Care, Temple, Texas.

7. On or about August 23, 2005, while employed as an Licensed Vocational Nurse with Weston Inn Health Center, Temple, Texas, Respondent may have lacked fitness to practice vocational nursing in that she smelled of alcohol, and she admitted she was working while intoxicated. Respondent's conduct could have effected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her ability to make rational, accurate, and appropriate assessments, judgements, and decisions regarding patient care, thereby placing the patients in potential danger.

8. On or about May 11, 2006, Respondent produced a specimen for a drug screen which resulted positive for Ethyl Glucuronide. The use of alcohol by a nurse, while subject to call or duty, could impair the nurses' 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, judgements, and decisions regarding patient care, thereby placing the patient in potential danger.

9. On or about December 27, 2007, Respondent produced a specimen for a drug screen which resulted positive for Ethyl Glururonide.. The use of alcohol by a nurse, while subject to call or duty, could impair the nurses' 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, judgements, and decisions regarding patient care, thereby placing the patient in potential danger.

10. 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.

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 admits to the conduct outlined in Findings of Fact Numbers Seven (7) through Nine (9). Respondent states that she just got complacent with her treatment program and relapsed on alcohol.

13. Respondent's conduct described in Findings of Fact Numbers Seven (7) through Nine (9) resulted from Respondent's dependency on chemicals.

14. 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 violations of Section 301.452(b)(9),(10)&(12), Texas Occupations Code, .and 22 TEX. ADMIN. CODE §217.12(1)(A)(B)(E),(4),(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 88178, heretofore issued to CYNTHIA D. POWELL, 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):

RESPONDENT SHALL deliver the wallet-sized license issued to CYNTHIA D. POWELL, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of this Order.

(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) 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/her 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 multistate licensure 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 revocation of Respondent's license and multistate licensure 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. 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 vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 9th day of January 2009

Cindy Powell

CYNTHIA D. POWELL, Respondent

Sworn to and subscribed before me this 9th day of January, 2009.

SEAL

Monica M. Gonzales

Notary Public in and for the State of Texas

MONICA M GONZALES
Notary Public
STATE OF TEXAS
My Comm. Exp. 05-27-12

88178:133

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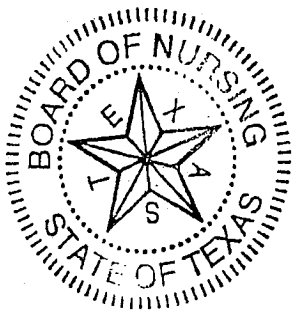
WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 9th day of January, 2009, by CYNTHIA D. POWELL, Vocational Nurse License Number 88178, and said Order is final.



Entered and effective this 16th day of January, 2009.

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