IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 215415	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
DENISE SMITH	§	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

ORDER OF THE BOARD

TO: DENISE SMITH
26720 WHITEWAY DR. #F416
RICHMOND HTS, OH 44143

During open meeting held in Austin, Texas, on May 11, 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 file a written response to the Formal Charges as required by 22 TEX. ADMIN. CODE § 213.16.

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 of the violations alleged in the Formal Charges were given to Respondent in this matter, Respondent has failed to file an answer in accordance with 22 TEX. ADMIN. CODE § 213.16.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056 and 22 TEX. ADMIN. CODE § 213.16.

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 to set aside the default order (22 TEX. ADMIN.CODE § 213.16(j)). All parties have a right to judicial review of this Order.

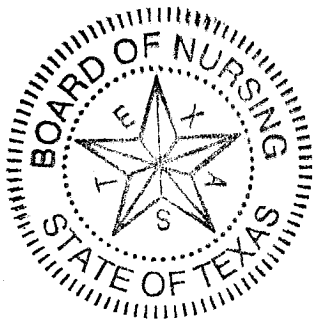
All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 215415, previously issued to DENISE SMITH, to practice vocational nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 215415, previously issued to DENISE SMITH, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privilege, if any, to practice vocational nursing in the State of Texas.

Entered this 11th day of May, 2010.



TEXAS BOARD OF NURSING
FOR THE STATE OF TEXAS

BY: _____

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

Re: Permanent Certificate Number 215415
Issued to DENISE SMITH
DEFAULT ORDER -REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 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):

DENISE SMITH
26720 WHITEWAY DR. #F416
RICHMOND HTS, OH 44143

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 215415, Issued to	§	
DENISE SMITH, Respondent	§	**BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, DENISE SMITH, is a Vocational Nurse holding license number 215415, 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 March 28, 2009, Respondent failed to comply with the Eligibility Agreed Order issued to her on March 18, 2008, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Six (6) of the Order which states, in pertinent part that:

> (6) Respondent shall, within one (1) year of initial licensure in the State of Texas, successfully complete a course in Texas nursing jurisprudence and ethics....

A copy of the March 18, 2008, Eligibility Agreed Order, Findings of Fact, and Conclusions of Law 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) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

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CONTINUED ON NEXT PAGE.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of revocation of Respondent's license to practice vocational nursing in the State of Texas pursuant to 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 § 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 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: Eligibility Agreed Order dated March 18, 2008.

Filed this 9th day of March, 2010.

TEXAS BOARD OF NURSING

R. Kyle Hensley

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
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
John F. Legris, Assistant General Counsel
State Bar No. 00785533
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Eligibility Agreed Order dated March 18, 2008.

BEFORE THE
TEXAS BOARD OF NURSING
****

In the Matter of	§	ELIGIBILITY
DENISE SMITH	§	
APPLICANT for Eligibility for Licensure	§	AGREED ORDER

On the date entered below, the Texas Board of Nursing, hereinafter referred to as the Board, considered the Application for Licensure by Endorsement and supporting documents filed by DENISE SMITH, hereinafter referred to as APPLICANT, together with any documents and information gathered by staff and APPLICANT's Certificate contained herein. Information received by the Board produced evidence that APPLICANT may have violated Section 301.452(b)(3), Texas Occupations Code.

APPLICANT waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on January 16, 2008, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about September 18, 2007, Applicant submitted an Application for Licensure by Endorsement as a vocational nurse in the State of Texas in compliance with Section 301.260 *et seq.*, of the Texas Occupations Code.

2. Applicant waived representation by counsel, informal conference, notice and hearing, and consented to the entry of this Order.

3. Applicant received a Certificate in Vocational Nursing from Central School of Practical Nursing, Cleveland, Ohio, in September 2000.

4. Applicant completed the Application for Licensure by Endorsement and answered "yes" to the question which reads in part as follows: *"Have you been convicted, adjudged guilty by a court, pled guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrests? This includes expunged offenses and deferred adjudication with or without prejudice of guilt."*

5. Applicant disclosed the following criminal history, to wit:

On November 6, 1989, Applicant was charged with the fourth degree felony offense of Forgery in the Court of Common Pleas, Wood County, Ohio. Applicant entered a plea of guilty and was sentenced to one (1) year confinement, which was probated to two (2) years probation. On November 6, 1991, Applicant completed probation.

6. There is no evidence of any subsequent criminal conduct.

7. Applicant has sworn that her past behavior conforms to the Board's professional character requirements. Applicant presented no evidence of behavior which is inconsistent with good professional character.

8. On January 16, 2008, the Executive Director considered evidence of Applicant's past behavior in light of the character factors set out in 22 Texas Administrative Code §213.27 and determined that Applicant currently demonstrates the criteria required for good professional character.

9. Licensure of Applicant poses no direct threat to the health and safety of patients or the public.

10. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Applicant's disclosures.

11. Applicant has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.

CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to Section 301.453 *et seq.*, Texas Occupations Code.

2. Applicant has submitted an application in compliance with Section 301.260, Texas Occupations Code.

3. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.

4. This Order is conditioned upon the accuracy and completeness of Applicant's disclosures. Any subsequently discovered discrepancies will result in investigation and disciplinary action.

5. The Board may license an individual who has been previously convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not a sentence was imposed upon consideration of the factors set out in 22 Texas Administrative Code §213.28 and evaluating the direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code.

6. Applicant shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452 *et seq.*, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED that the application of DENISE SMITH, APPLICANT, is hereby conditionally GRANTED and shall be subject to the following conditions:

(1) APPLICANT SHALL obtain and read the Texas Nursing Practice Act, and the Rules and Regulations Relating to Vocational Nurse Education, Licensure and Practice.

(2) Upon payment of the necessary fees, APPLICANT SHALL be issued a license to practice vocational nursing in the State of Texas, which shall bear the appropriate notation.

(3) APPLICANT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(4) IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to APPLICANT's multistate licensure privilege, if any, to practice vocational nursing in the State of Texas.

(5) IT IS FURTHER AGREED and ORDERED that while APPLICANT's license is encumbered by this Order the APPLICANT may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where APPLICANT wishes to work.

(6) APPLICANT SHALL, within one (1) year of initial licensure in the State of Texas, successfully complete a course in Texas nursing jurisprudence and ethics. APPLICANT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding Sexual Misconduct, Fraud, Theft and Deception, Nurses with Chemical Dependency, and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. APPLICANT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify APPLICANT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bne.state.tx.us/about/stipscourses.html.*

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, APPLICANT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice vocational nursing in the State of Texas.

APPLICANT'S CERTIFICATION

I am the Applicant in this matter. I have fully and truthfully disclosed all of my past criminal conduct, and I have caused a complete and accurate criminal history to be submitted to the Texas Board of Nursing from each jurisdiction in which I have been adjudged guilty by way of conviction or deferred order. I certify that my past behavior, except as disclosed in my Application for Licensure by Endorsement, has been in conformity with the Board's character rule. I have provided the Board with complete and accurate documentation of my past behavior in violation of the penal law of any jurisdiction which was disposed of through any procedure short of conviction, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my application, I acknowledge that I have read and I understand Section 301.257, Texas Occupations Code, Section 301.452(a), (b) and (c), Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and Board Rules 213.27, 213.28, and 213.29 at 22 Texas Administrative Code. I agree with all terms of this Order, including the Findings of Fact and Conclusions of Law and any stipulations as set out in this Order. I acknowledge that this Order is stipulated and I understand that I am not eligible to receive a Temporary Permit to practice. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to accepting any permit or license from the Texas Board of Nursing.

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.

I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Executive Director of the Texas Board of Nursing enter this Order.

Signed this 25th day of February 2008.

Denise Smith

DENISE SMITH, APPLICANT

Sworn to and subscribed before me this 25th day of February, 2008.

SEAL

Lavon Steph

Notary Public in and for the State of OHIO

LAVON STEPHENS
Notary Public, State of Ohio, Cuy. C
My Commission Expires Mar. 30, 2010

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby ratify and adopt the Order of Conditional Eligibility that was signed on the 25th day of February, 2008, by TAMEKA DYCHELLE FLAKE, PETITIONER, for Application for Licensure by Examination, and said Order is final.

Entered this 18th day of March, 2008.

TEXAS BOARD OF NURSING

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