

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 446244
ISSUED TO
JOSEPH EDWARD TEMKO

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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. Thomas
Executive Director of the Board

ORDER OF THE BOARD

TO: Joseph Edward Temko
8360 Park Place #36
Houston, Texas 77017

During open meeting held in Austin, Texas, on August 17, 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 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 § 213.2(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 446244, previously issued to JOSEPH EDWARD TEMKO, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 446244, previously issued to JOSEPH EDWARD TEMKO, 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 nurse licensure compact privileges, if any, to practice professional nursing in the State of Texas.

Entered this 17 day of August, 2010.

TEXAS BOARD OF NURSING



BY:

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

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of AUGUST, 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):

Joseph Edward Temko
8360 Park Place #36
Houston, Texas 77017

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



Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.bon.state.tx.us

Katherine A. Thomas, MN, RN
Executive Director

May 28, 2010

91 7108 2133 3938 2107 0509

Certified Mail No.
Return Receipt Requested

Joseph Edward Temko
8360 Park Place #36
Houston, Texas 77017

Dear Mr. Temko:

Enclosed are Formal Charges which have been filed against you alleging one or more violations of Section 301.452(b) of the Nursing Practice Act, Texas Occupations Code. Within three weeks of the date of this letter, you must file a written answer to each charge admitting or denying each allegation. If you intend to deny only part of an allegation, you must specify so much of it as is true and deny only the remainder. Your answer shall also include any other matter, whether of law or fact, upon which you intend to rely for your defense. Please send your written answer to the attention of Veronica Franco, Investigator. You may obtain legal counsel at your own expense.

FAILURE TO FILE A WRITTEN ANSWER TO THE FORMAL CHARGES, EITHER PERSONALLY OR BY LEGAL REPRESENTATIVE, WILL RESULT IN THE ALLEGATIONS CONTAINED IN THE FORMAL CHARGES BEING ADMITTED AS TRUE AND THE PROPOSED RECOMMENDATION OF STAFF WILL BE GRANTED BY DEFAULT.

Please be advised that should you fail to file a written answer, the case will proceed on a default basis and it will be staff's recommendation that a default order be entered revoking your license or multistate privilege to practice professional nursing in the State of Texas.

The results of any default order or formal disposition (Board Order) are public information. Results of informal and formal dispositions will appear in the Board's newsletter under the heading of "Disciplinary Action."

Should you desire to discuss this matter, you may contact Veronica Franco, Investigator, Enforcement Division, at the above address, or at (512) 305-7949.

Sincerely,

Katherine A. Thomas, MN, RN
Executive Director

KAT/vf

Enclosure: Formal Charges

09/99-DA

Members of the Board

Linda Rounds, PhD, FNP, RN
Galveston, President

Deborah Bell, CLU, ChFC
Abilene

Kristin Benton, MSN, RN
Austin

Patricia Clapp, BA
Dallas

Tama Cowen, RN
Harlingen

Sheri Crosby, JD, SPHR
Dallas

Marilyn Davis, BSN, RN, MPA
Sugar Land

Reverley Jean Nuttall, L.V.N. Mary Jane Salgado, MEd

In the Matter of Permanent License § **BEFORE THE TEXAS**
Number 446244, Issued to §
JOSEPH EDWARD TEMKO, Respondent § **BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, JOSEPH EDWARD TEMKO, is a Registered Nurse holding license number 446244, 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 April 2, 1993, Respondent's license to practice professional nursing in the State of Washington was INDEFINITELY SUSPENDED by the State of Washington, Department of Health, Board of Nursing, Olympia, Washington. A copy of the Findings of Fact, Conclusion of Law and Order On Default, dated April 2, 1993, 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)(8), Texas Occupations Code.

CHARGE II

On or about January 26, 1996, Respondent's license to practice professional nursing in the State of Washington was REVOKED by the State of Washington, Department of Health, Nursing Care Quality Assurance Commission, Olympia, Washington. A copy of the Findings of Fact, Conclusions of Law, and Final Order of Default, dated January 26, 1996, 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)(8), Texas Occupations Code.

CHARGE III.

On or about December 21, 2009, Respondent's license to practice professional nursing in the State of Washington was placed on PROBATION by the State of Washington Department of Health Nursing Care Quality Assurance Commission, Olympia, Washington. A copy of the Stipulated Findings of Fact, Conclusions of Law and Agreed Order on Reinstatement, dated December 21, 2009, is attached and incorporated, by reference, as a part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(8), Texas Occupations Code.

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 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 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.

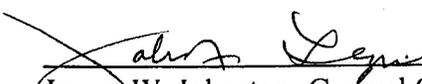
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NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Orders which are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Orders of the Board, State of Washington, Department of Health, dated April 2, 1993, January 26, 1996, and December 21, 2009.

Filed this 28th day of May, 2010.

TEXAS BOARD OF NURSING


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

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: State of Washington, Department of Health Orders of the Board dated April 2, 1993, January 26, 1996, and December 21, 2009

0999/D

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
BOARD OF NURSING

In the Matter of the Suspension)
or Revocation of the License to) No. RN 0102
Practice as a Registered Nurse of)
JOSEPH TEMKO, R.N.,) FINDINGS OF FACT,
Respondent.) CONCLUSIONS OF LAW
AND ORDER ON DEFAULT

THIS MATTER came before a disciplinary panel of the Washington State Board of Nursing (Board) on March 22, 1993, at the Wyndham Gardens Hotel, Sea Tac, Washington. The State appeared by and through David Hankins, Assistant Attorney General. The Respondent, Joseph Temko, did not appear personally or by counsel. The Board having heard the testimony, reviewed the evidence and record herein, and being otherwise advised on the premises, now, makes the following:

I. FINDINGS OF FACT

1.1 That Respondent, Joseph Temko, is licensed to practice as a registered nurse in the State of Washington and was so licensed at all times material hereto.

1.2 That on or about November 30, 1992, a Statement of Charges was issued against Respondent's license to practice as a registered nurse in the State of Washington.

1.3 That Annetta Slettevold, Nurse Practice Manager for the Board, testified that she is familiar with the Board's records and service of process, and further testified that:

a. On or about December 2, 1992, the Board sent the following

documents by surface and certified mail to the Respondent at Respondent's address of record: cover letter, the Statement of Charges, Notice of Opportunity to Defend and Notice of Settlement Opportunity, and Answer to Statement of Charges. That the documents sent by certified mail were returned to the Board marked "refused 12/4/92". The documents sent by surface mail were not returned to the Board.

b. The Notice of Opportunity to Defend and Notice of Settlement Opportunity and the Answer to Statement of Charges informed the Respondent that failure to return the Answer to Statement of Charges to the Board within twenty (20) days of service of the documents would constitute a waiver of Respondent's opportunity for a hearing in this matter and would result in the Board finding that the Respondent did not contest the allegations in the Statement of Charges. The cover letter warned the Respondent that the Answer to Statement of Charges had to be received by the Board by December 22, 1992, otherwise Respondent would be deemed to have waived the opportunity for a hearing in this matter.

c. Respondent failed to submit his Answer to Statement of Charges by December 22, 1992.

d. By letter dated December 23, 1992, mailed to the Respondent by surface and certified mail to Respondent's address of record, the Board notified Respondent that his Answer to Statement of Charges had not been received by the Board to date and that, accordingly, the Respondent was deemed to have waived his

opportunity for a hearing in this matter. The letter sent by certified mail was returned to the Board marked "unclaimed". The letter sent by surface mail was not returned to the Board.

e. There is no reason to believe that Respondent's failure to return the Answer to Statement of Charges within the twenty (20) days was due to Respondent's active military service.

1.4 That Respondent received proper notice of the charges in this matter and proper service of the documents pertaining to the charges in this matter.

1.5 That on March 19, 1993, the Board received a letter from Respondent and his untimely Answer to Statement of Charges.

1.6 That the State requested permission to proceed in default.

1.7 That Ms. Slettevold testified that Board received the documents in Exhibit 1 from the Washington Health Professional Services program (WHPS) after Respondent left that program. That Exhibit 1 contains a July 8, 1992 memorandum from Jean Sullivan, WHPS administrator, to Annetta Slettevold. In that memorandum, Ms. Sullivan indicated that Respondent came into the Monitoring Program in June, 1991, and despite her frequent and careful explanations to the contrary, Respondent persisted in the notion that he was a voluntary referral with no complaint lodged against him. Ms. Sullivan further indicated that Respondent maintained his denial while in the program. Respondent admitted to Ms. Sullivan that he drank "occasionally" and that he had been treated at the Lakeside Program.

Despite a brief drinking episode, Respondent did well in the program until April/May, 1992, when he started to miss his nurse support group meetings and began to exhibit some of his old behaviors, such as bouncing checks. Respondent called Ms. Sullivan in June to inform her that he wanted to drop out of the program, because he did not want to be different anymore and wanted to have a couple of beers now and then. Thereafter, Respondent wrote Ms. Sullivan and confirmed that he was withdrawing from the program on the grounds that his drinking was a problem of the past. Exhibit 1.

1.8 That Jean Giese, R.N., Health Care Investigator for the Board, testified that she investigated the allegations against Respondent in this matter. As part of her investigation, Ms. Giese obtained the documents comprising Exhibit 2, except for the laboratory report from St. Peter Hospital which was already a part of Respondent's file. This lab report was received in the intercampus mail envelope on July 26, 1991 and Ms. Giese obtained the original copy on September 25, 1991. The laboratory report from St. Peter Hospital shows that at 10:17 p.m., June 3, 1991, a blood sample was drawn from Respondent for the purpose of a blood alcohol test. Analysis of that sample tested positive at <0.02.

1.9 That Exhibit 2 contains a letter to the Board, dated June 4, 1991, from Candace L. Smith, R.N. CCRN, Director, Acute Care Nursing Services, pertaining to the June 3, 1991 incident involving Respondent. Respondent's nursing services had been contracted through Western Medical Services nursing company. On June 3, 1991,

at the beginning of the 1900 (7 p.m.) shift, staff members in the Special Care Unit detected the odor of alcohol on Respondent's breath and notified the evening supervisor. Pursuant to hospital policy, the supervisor asked Respondent to submit to a serum blood alcohol level. Respondent refused to comply and was relieved of duty. Respondent's car keys were confiscated and Respondent told his supervisors that he would take the bus home. Western Medical Services was contacted.

1.10 That Ms. Giese testified that she interviewed Marie H. Owen, Health Care Coordinator, Capital Medical Services, and obtained Ms. Owen's written statement. Ms. Owen indicated that on June 3, 1991, at approximately 1945-1950, she, Respondent, and several other employees participated in a telephone conference call regarding the report that Respondent had alcohol on his breath and had exhibited irrational behavior at the time he reported for work at 1900 that evening. Respondent denied that he had been drinking. Respondent was informed that hospital policy required that a serum blood alcohol level be drawn. Respondent refused to comply. Ms. Owen indicated that she could smell alcohol on Respondent. Exhibit 2, pages 12-14.

1.11 That Ms. Giese also testified that she interviewed Renee Jaspers and obtained her written statement. Ms. Jaspers indicated that at about 6:50 p.m., she entered the report room in the ICU at Capital Medical Center where she met Respondent. When he passed her, Ms. Jaspers thought that Respondent smelled of alcohol. When Respondent and Ms. Jaspers spoke, Respondent was red faced, loud,

and "kind of hyper". Ms. Jaspers reported her suspicion that Respondent had been drinking to the charge nurse, Patty Russel. Ms. Jaspers then left the ICU to work on another floor for about thirty minutes. She was then called back to the ICU to assume the care of Respondent's patients. Ms. Jaspers indicated that Respondent had already assessed and charted on at least one of those patients. Exhibit 2, pages 15-17.

1.12 That on February 14, 1992, Respondent provided his written statement to the Board. Exhibit 2, pages 52-58. On page 56 of that statement, Respondent admitted that he had consumed one and three-fourth beers just prior to the beginning of his shift on June 3, 1991. Respondent also admitted that he had consumed the beer after he had called and confirmed that he would be working that evening (June 3, 1991).

1.13 That on or about June, 1991, Respondent was employed at Capital Medical Center, Olympia, Washington, through the nursing agency Western Medical Services, and that on June 3, 1991, at or about 7:00 p.m., Respondent was detected with alcohol on his breath when he reported for work. That on June 3, 1991, Respondent assessed at least one patient while under the influence of alcohol. Respondent was asked to submit to a blood alcohol examination according to hospital policy, but refused. Respondent later admitted to consuming alcohol prior to reporting for work.

1.14 That Respondent's assessment of a patient on June 3, 1991 constituted the practiced registered nursing.

1.15 That Respondent created an unreasonable risk that a

patient may be harmed when he practiced registered nursing while under the influence of alcohol on June 3, 1991.

1.16 That Respondent failed to successfully complete the Washington Health Professional Services Program by failing to complete the program.

Based on the foregoing Findings of Fact, the Board now makes the following:

II. CONCLUSIONS OF LAW

2.1 That the Board has jurisdiction over the Respondent and over the subject matter herein.

2.2 That based upon Findings of Fact 1.1 through 1.6, this matter may proceed in default pursuant to RCW 34.05.440(1).

2.3 That pursuant to RCW 34.05.461(5), the Board may apply its expertise in evaluating the evidence presented. Applying its expertise to the evidence presented and based upon Findings of Fact 1.1, 1.2, and 1.7 through 1.16, the Board determines that sufficient grounds exist to take action against Respondent's license to practice as a registered nurse in the State of Washington pursuant to RCW 18.180.160, RCW 18.130.175(1), RCW 18.130.180(4) and (7), WAC 246-839-710(4)(d), and WAC 246-839-780(1)(b)(vii) and (viii), and (d), which provide in pertinent part as follows:

RCW 18.130.175 Voluntary substance abuse monitoring programs. (1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or drug treatment shall be provided by *approved treatment facilities under RCW 70.96A.020(2): PROVIDED, That nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or drug treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160.

RCW 18.130.180 Unprofessional Conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

WAC 246-839-710 Violations of standards of nursing conduct or practice. The following will serve as a guideline for the nurse as to the acts, practices, or omissions that are inconsistent with generally accepted standards of nursing conduct or practice. Such conduct or practice may be grounds for action with regard to the license to practice registered nursing . . .

(1) Failure to adhere to the standards enumerated in WAC 246-839-700(1) which may include:

(4) Other violations:

(d) Practicing nursing while impaired by alcohol and/or drugs.

WAC 246-839-780 Participation in approved substance abuse monitoring program. (1) In lieu of disciplinary action, the nurse may accept board referral into the approved substance abuse monitoring program.

(b) The nurse shall enter into a contract with the Board and the approved substance abuse monitoring program to comply with the requirement of the program which shall include, but not be limited to:

(vii) The nurse will comply with specified employment conditions and restrictions as defined by the contract.

(viii) The nurse shall sign a waiver allowing the approved monitoring program to release information to the board if the nurse does not comply with the requirements of this contract.

(d) The nurse may be subject to disciplinary action under RCW 18.130.160 if the nurse does not consent to be referred to the approved monitoring program[,] does not comply with specified employment restrictions, or does not successfully complete the program.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Board now makes and enters the following:

III. ORDER

IT IS HEREBY ORDERED That the license to practice as a registered nurse in the State of Washington held by Joseph Temko shall be and hereby is INDEFINITELY SUSPENDED effective the date of this Findings of Fact, Conclusions of Law and Order on Default; and further, that the term "Order" as used hereinafter shall mean this entire Findings of Fact, Conclusions of Law and Order on Default.

IT IS HEREBY FURTHER ORDERED That:

3.1 Respondent shall immediately return both portions of his license to the Board within ten (10) days of the receipt of this Order.

3.2 Respondent shall not violate any law or regulation regarding the practice of registered nursing.

3.3 Respondent shall pay to the Board a monetary penalty in the amount of FIVE HUNDRED DOLLARS (\$500.00). Said fine shall be paid directly to the Board prior to requesting modification of this Order.

3.4 Respondent shall successfully complete a Board of Nursing approved inpatient substance abuse program and all recommended follow-up treatment. Respondent shall provide a copy of this Order to the inpatient substance abuse treatment program at the time he enrolls in said program. Before requesting modification of this Order, Respondent shall cause the counselor qualified in such disciplines and experienced in substance abuse treatment to submit a written statement to the Board referencing this Order and indicating Respondent's success in treatment and the likelihood of continued abstinence.

3.5 Respondent shall obtain a substance abuse evaluation of himself which was completed within the ninety (90) day period immediately preceding his petition for modification of this Order. Respondent shall provide the evaluator with a copy of this entire Order prior to the evaluation and cause the evaluator to submit a written substance abuse evaluation to the Board which references this Order and which also includes a prognosis and any recommended treatment. The substance evaluation report must be received by the Board prior to Respondent's request for modification of this Order.

3.6 Respondent shall not make public appearances representing

self as a licensed registered nurse while his license to so practice is suspended without stay.

3.7 Respondent shall appear in person for interviews with the Board or its designee upon request and with reasonable notice.

3.8 Any and all costs involved in complying with these orders shall be borne by the Respondent.

3.9 Respondent shall immediately execute all release of information forms as may be required by the Board or its designee.

3.10 Respondent may submit a written request for modification of this Order no sooner than eighteen (18) months from the date of this Order and only after he has complied with the orders set forth in paragraphs 3.3 through 3.5 above.

- a. Respondent must personally appear before the Board.
- b. Respondent must show satisfactory compliance with the terms and conditions imposed in this Order.
- c. The Board may impose additional conditions after reviewing the reports submitted and reviewing the Respondent's compliance with this Order.

3.11 Any failure to comply with the conditions imposed by the Board will be grounds for further disciplinary action against Respondent's license to practice as a registered nurse in the State of Washington.

THE RESPONDENT IS FURTHER ADVISED, pursuant to RCW 34.05.461 and .470, that within ten (10) days of the service of this Order, Respondent may file a petition with the Board for reconsideration, stating the specific grounds upon which relief is requested. The

petition for reconsideration must be mailed or delivered to State of Washington, Board of Nursing, 1300 SE Quince Street, Mail Stop: EY-27, P.O. Box 47864, Olympia, WA 98504-7864. The petition for reconsideration shall not stay the effectiveness of the Board's Order. The petition is deemed to have been denied if, within twenty (20) days of the date of its filing, the Board has not disposed of the petition or has not served written notice specifying the date by which it will act on the petition.

DATED This 2nd day of April, 1993.

STATE OF WASHINGTON
BOARD OF NURSING

By:

Sheila Masteller
Sheila Masteller, R.N., M.S.N.,
Chairperson



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Joseph E. Tempko, R.N
Master Case No. M1993-52746
No.: RN 0102
Document: Statement of Charges

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**I certify that this is a true and correct copy of the
Document on file with the State of Washington,
Department of Health, Adjudicative Clerk Office**

4th day of March 2010

[Signature]
Signature, Authorized Representative *Coordinator*

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE COMMISSION

In the Matter of the License to
Practice Registered Nursing of:

JOSEPH E. TEMKO, R.N.,

Respondent.

NO. RN 0102

STATEMENT OF CHARGES

Annetta Slettevold, Nurse Practice Manager of the State of Washington, Department of Health, Nursing Care Quality Assurance Commission, and upon designation by the disciplinary authority, states and alleges as follows:

I. JURISDICTION

1.1 As of July 1, 1994, pursuant to Laws of 1994, 1st Spec. Sess., ch. 9, the legislature created the Washington State Nursing Care Quality Assurance Commission. The jurisdictions of the former Board of Nursing and Board of Practical Nursing have been merged into the Nursing Care Quality Assurance Commission. Adjudicative authority for the Uniform Disciplinary Act, chapter 18.130 RCW, has been transferred to the Commission pursuant to Laws of 1994, 1st Spec. Sess., ch. 9, § 412.

II. LICENSE STATUS

2.1 Respondent was issued a license to practice as a registered nurse in the state of Washington in August 1981. Respondent's license to practice as an Registered Nurse in the State of Washington expired in September 1993.

III. CONFIDENTIAL SCHEDULE

3.1 Not applicable.

IV. FACTUAL ALLEGATIONS

4.1 That on or about November 3, 1992, a statement of charges was issued against respondent's license to practice as a registered nurse in the state of Washington alleging that on or about June 1991 respondent reported to work with alcohol on his breath and that respondent failed to successfully complete the Washington Health Professional Services program by failing to comply with the terms of his monitoring contract.

4.2 On March 22, 1993, a default hearing was held before the Washington State Board of Nursing. A Findings of Fact, Conclusions of Law and Order on default was issued on April 2, 1993 indefinitely suspending respondent's license to practice as a registered nurse in the State of Washington without stay and imposing other terms and conditions.

4.3 That during the period the respondent's license to practice as a registered nurse in the state of Washington was indefinitely suspended without stay, respondent sought and gained employment in Seattle, Washington with Trident Seafood, a Seattle based corporation, on a processing ship. Respondent was employed with Trident Seafood between October 30, 1992 through October 31, 1993.

4.4 That respondent provided fraudulent information on his employment application for Trident Foods indicating that he held a current and valid license to practice as a registered nurse in the

state of Washington.

V. ALLEGED VIOLATIONS

5.1 The allegations contained in paragraphs 4.1 through 4.4 above constitute unprofessional conduct and are grounds for disciplinary action on respondent's license to practice as a registered nurse in the State of Washington pursuant to RCW 18.88.086, RCW 18.130.180 (1), (3), (4), (7), (9), (12), (13), which provide in pertinent part:

RCW 18.88.086 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an

unreasonable risk that a patient may be harmed;

. . .
(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

. . .
(9) Failure to comply with an order issued by the disciplining authority or an assurance of discontinuance entered into with the disciplining authority;

. . .
(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;
. . .

It is further alleged that the allegations specified and conduct referred to in this Statement of Charges affect the public health, safety and welfare, and the Commission directs that a notice should be issued and served on Respondent as provided by law, giving the Respondent the opportunity to defend against the accusations of the Statement of Charges. If the Respondent fails to defend against these allegations, the Respondent shall be subject to such discipline as is appropriate under RCW 18.130.160.

DATED this 20th day of September, 1994.

WASHINGTON STATE NURSING CARE
QUALITY ASSURANCE COMMISSION

By: *Annetta Slettevold*
ANNETTA SLETTEVOLD, R.N.
Nurse Practice Manager

Susan Somers per A. Slettevold
SUSAN M. SOMERS
Assistant Attorney General
Prosecutor



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Joseph E. Tempko, R.N
Master Case No. M1993-52746
No.: RN 0102
Document: Default Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

I certify that this is a true and correct copy of the
Document on file with the State of Washington,
Department of Health, Adjudicative Clerk Office

4th day of March 2010

[Signature]
Signature, Authorized Representative

Coordinated

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE COMMISSION

In the Matter of the License to
Practice Registered Nursing of:

JOSEPH E. TEMKO, R.N.,

Respondent.

OPS No. 95-10-06-12 RN
Prog. No. RN 0102

Findings of Fact,
Conclusions of Law, and
Final Order of Default

A hearing was held before the Washington State Nursing Care Quality Assurance Commission (the Commission) on January 18, 1996, at the Marriott Hotel, Seattle, Washington. Commission members deciding the case were Donna Campbell, R.N., Chairperson, Rose Marie Neumann, L.P.N., JoAnn Shoemaker, L.P.N., and Ron Morrison, Public Member.

The Reviewing Commission member was Lorraine Overmyer and she did not participate in the proceeding.

The Respondent, Mr. Temko, R.N., was not present and was not represented by counsel. The Commission, having considered the evidence, now issues the following:

I. PROCEDURAL HISTORY AND RULING OF DEFAULT

1.1 A Statement of Charges was issued on September 20, 1994, alleging unprofessional conduct by the Respondent. A Notice of Opportunity to Defend and Notice of Settlement Opportunity was also issued on September 20, 1994.

1.2 Respondent submitted his Answer to Statement of Charges on or about October 10, 1994, in which he requested a settlement offer, to be followed by a hearing if a settlement could not be reached.

1.3 On September 29, 1995, the Commission served a Scheduling Order on the Respondent by mail. The Scheduling Order, among other matters, set prehearing and hearing dates. The Respondent failed to appear at the scheduled prehearing conference.

1.4 Exhibit 1, Prehearing Order No. 1: Order of Default dated October 25, 1995. Granting the Department's motion to proceed in default, pursuant to RCW 34.05.440(2) and WAC 256-11-280(2).

1.5 Exhibit 2, consisting of the Affidavit of Annetta Slettevold, dated November 14, 1995, and attached supporting documents, was admitted into evidence.

II. FINDINGS OF FACT

2.1 The Respondent was issued a license to practice as a registered nurse in the state of Washington on August 28, 1981. The license expired on August 3, 1993.

2.2 On October 25, 1995, Prehearing Order No. 1: Order on Default, was issued which found the Respondent in default for failure to appear and defend this action by failing to attend the prehearing conference on October 18, 1995.

2.3 That on or about November 3, 1992, a statement of charges was issued against respondent's license to practice as a registered nurse in the state of Washington alleging that on or about June 1991 respondent reported to work with alcohol on his breath and that respondent failed to successfully complete the Washington Health Professional Services program by failing to comply with the terms of his monitoring contract.

2.4 On March 22, 1993, a default hearing was held before the Washington State Board of Nursing. A Findings of Fact, Conclusions of Law and Order on Default was issued on April 2, 1993 indefinitely suspending respondent's license to practice as a

registered nurse in the state of Washington without stay and imposing other terms and conditions.

2.5 That during the period the respondent's license to practice as a registered nurse in the state of Washington was indefinitely suspended without stay, respondent sought and gained employment in Seattle, Washington with Trident Seafood, a Seattle based corporation, on a processing ship. Respondent was employed with Trident Seafood between October 30, 1992 through October 31, 1993.

2.6 That respondent provided fraudulent information on his employment application for Trident Foods indicating that he held a current and valid license to practice as a registered nurse in the state of Washington.

III. CONCLUSIONS OF LAW

3.1 The Respondent, Joseph Temko, R.N., is licensed to practice as a registered nurse in the state of Washington, and is subject to the provisions of chapters 18.79 (formerly chapter 18.88) and 18.130 RCW and chapter 246-839 WAC.

3.2 Based on the procedural history of the case and pursuant to RCW 18.130.090(1), the Commission may issue a dispositive order on the basis of information available to it through the evidence presented by the Department. The Commission elects to do so based on the default order and pursuant to WAC 246-11-280 (2).

3.3 That pursuant to RCW 34.05.461(5), the Commission may apply its expertise in evaluating the evidence presented. Applying its expertise to the evidence presented and based upon Findings of Fact 2.2 through 2.6, Respondent has engaged in unprofessional conduct in violation of RCW 18.88.086, RCW 18.130.180(1), (3), (4), (7), (9), (12), and (13). The Commission determines that sufficient grounds exist to take disciplinary action against Respondent's license to practice as a registered nurse in the state of Washington, pursuant to RCW 18.130.160.

IV. ORDER

Based on the foregoing Procedural History and Ruling of Default, Findings of Fact, and Conclusions of Law, the Commission hereby makes the following ORDER:

4.1 The license of Joseph Temko, R.N., to practice as a registered nurse in the state of Washington is REVOKED.

4.2 The Respondent shall immediately return both portions of his license to the Commission within ten (10) days of the receipt of this Order.

4.3 The Respondent shall not make public appearances representing himself as a registered nurse while his license is revoked.

4.4 The Respondent shall appear in person for interviews with the Commission or its designee upon reasonable notice.

4.5 Any and all costs involved in complying with this Order shall be borne by the Respondent.

4.6 The Respondent shall immediately execute all release of information forms as may be required by the Commission or its designee.

4.7 The Respondent may reapply for a license as a registered nurse when he can demonstrate to the Commission that he is competent and fit to practice as a registered nurse in the state of Washington. If respondent does reapply, he will be required to comply with the requirements then existing for new applicants at the time of his application. At the time the Commission considers the application for licensure:

a. The Respondent may be required appear personally before the Commission.

4.8 As provided in RCW 34.05.461(3), .470, and WAC 246-11-580, either party may file a petition for reconsideration. The petition must be filed with the Nursing Care Quality Assurance Commission, 1300 SE Quince, PO Box 47864, Olympia WA 98504-7864, and a copy sent to the Office of Professional Standards, 2413 Pacific Avenue, PO Box 47872, Olympia WA 98504-7872, within ten days of service of this Order. The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration shall not stay the effectiveness of this Order. The petition for

reconsideration is deemed to have been denied 20 days after the petition is filed if the Commission has not acted on the petition or served written notice of the date by which action will be taken on the petition.

"Filing" means actual receipt of the document by the Commission, RCW 34-05-010(6). This Order was "served" upon you on the day it was deposited in the United States mail, RCW 34.05.010(18).

Proceedings for judicial review may be instituted by filing a petition in the Superior Court in accord with the procedures specified in chapter 34.05. RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review must be filed within thirty (30) days after service of this Order, as provided by RCW 34.05.542.

DATED THIS 26th DAY OF January, 1996.

Nursing Care Quality Assurance Commission



Panel Chairperson



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Joseph E. Temko
Master Case No. M1993-52746

Document: Reinstatement Order

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Deputy Secretary, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

I certify that this is a true and correct copy of the
Document on file with the State of Washington,
Department of Health, Adjudicative Clerk Office

4th day of March 2010

[Signature] Public Disclosure Coordinator
Signature, Authorized Representative

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE COMMISSION**

In the Matter of

JOSEPH E. TEMKO
Credential No. RN.RN.00073948

Respondent

No. M1993-52746

**STIPULATED FINDINGS OF
FACT, CONCLUSIONS OF LAW
AND AGREED ORDER ON
REINSTATEMENT**

The Nursing Care Quality Assurance Commission (Commission), by and through Michael Ellsworth, Department of Health Staff Attorney, and Respondent represented by counsel, Zenon Olbertz, stipulate and agree to the following:

1: PROCEDURAL STIPULATIONS

1.1 On August 28, 1981, the state of Washington issued Respondent a credential to practice as a registered nurse. Respondent's credential is currently revoked.

1.2 Respondent requested reinstatement of his credential to practice as a registered nurse in the state of Washington.

1.3 Respondent waives the opportunity for a hearing on the request for reinstatement provided that the Commission accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order on Reinstatement (Agreed Order on Reinstatement).

1.4 Respondent understands that this Agreed Order on Reinstatement is not binding unless and until it is signed and accepted by the Commission.

1.5 If the Commission accepts this Agreed Order on Reinstatement, it is subject to the federal reporting requirements pursuant to Section 1128E of the Social Security Act and 45 CFR Part 61, RCW 18.130.110 and any other applicable interstate/national reporting requirements. It is a public document and will be available on the Department of Health web site.

1.6 If the Commission rejects this Agreed Order on Reinstatement, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order on Reinstatement presentation.

2: FINDINGS OF FACT

The State and Respondent stipulate to the following facts:

2.1 On August 18, 1981, the state of Washington issued Respondent a credential to practice as a registered nurse. Respondent's credential is currently revoked.

2.2 Respondent requested reinstatement of his credential to practice as a registered nurse in the state of Washington.

2.3 On January 26, 1996, the Commission entered a Findings of Fact, Conclusions of Law, and Final Order of Default In the Matter of the License to Practice Registered Nursing of Joseph E. Temko OPS No. 95-10-06-12 RN, Prog. No. RN 0102 (January 26, 1996, Final Order of Default). In the January 26, 1996, Final Order of Default Respondent was to comply with, among other terms, the following conditions:

A. The license of Joseph Temko, R.N., to practice as a registered nurse in the state of Washington is REVOKED.

B. Respondent may reapply for a license as a registered nurse when he can demonstrate to the Commission that he is competent and fit to practice as a registered nurse in the state of Washington.

2.4 The Commission reviewed Respondent's file to determine compliance with the January 26, 1996, Final Order of Default and concluded Respondent has substantially complied with the terms and conditions.

3: CONCLUSIONS OF LAW

The State and Respondent agree to the entry of the following Conclusions of Law:

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 The request for reinstatement was brought properly before the Commission.

3.3 Respondent's request for reinstatement should be granted.

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4: AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order on Reinstatement:

4.1 Commencing the effective date of this Agreed Order on Reinstatement, provided Respondent meets all credentialing requirements, Respondent's credential is **REINSTATED** but subject to **PROBATION**. The conditions of probation include:

- A. Respondent shall ensure that all credentials received during the term of probation are stamped "probation" and shall immediately return any credential to the Commission that is not stamped "probation".
- B. Respondent may not practice as a RN except as part of a Commission-approved refresher course.
- C. Upon acceptance to the course, Respondent shall immediately notify the Commission and provide contact information for the course instructor.
- D. Respondent shall enter only ONE refresher course. Respondent may not drop out and re-enroll, or enroll in a different refresher program.
- E. This order in no way requires a refresher course to accept Respondent, and grants no special rights or privileges to Respondent during the time Respondent is enrolled in the course. Respondent must abide by all rules and policies of the course and governing institutions. Respondent must pass the course according to the same standards set for any other course participant.
- F. Respondent agrees that the refresher course instructor may share information on Respondent's progress with the Commission. In addition, Respondent agrees that the refresher program may share information concerning Respondent with clinical site coordinators.
- G. Clinical facilities must be notified of and provided a copy of this Order and are not required to grant a request for participation in a clinical rotation. Ultimately, it is Respondent's responsibility to find a suitable clinical site.
- H. Respondent shall provide three (3) copies of this Agreed Order on Reinstatement to the refresher course instructor. Respondent shall cause

the instructor to furnish written confirmation to the Commission that a copy of the Agreed Order on Reinstatement has been provided.

I. Respondent must provide proof of successful completion of the approved refresher course within twenty-four (24) months of the effective date of this Agreed Order on Reinstatement by submitting supporting documents to:

Nursing Care Quality Assurance Commission
Attention: Compliance Officer
P.O. Box 47864
Olympia, WA 98504-7864

Upon proof of successful completion of the refresher course within the required time frame, Respondent's credential shall remain on PROBATION and be valid for employment with the following conditions:

4.2 Respondent shall seek a substance abuse evaluation through the Washington Health Professional Services (WHPS) program and then, if recommended, enter and comply with all aspects of that program. If Respondent fails to cooperate with WHPS during the initial substance abuse evaluation or comply with any aspect of the program thereafter, it will be a violation of this Agreed Order on Reinstatement and may result in the Commission taking further disciplinary action against Respondent's credential. Respondent must contact the WHPS program and begin the evaluation process on or before thirty (30) days prior to completing the refresher course. Respondent shall sign a release that allows the WHPS program to provide the Commission monitoring records and / or reports pertaining to his participation in the program. WHPS may be contacted at PO Box 47872, Olympia, WA 98504-7872 or (360) 236-2880.

4.3 In the event WHPS does not require Respondent to enroll in the program, Respondent must submit personal progress reports directly to the Commission on a semi-annual basis. Personal progress reports must include the following information:

- A. Respondent's current employer and contact information;
- B. Respondent's duties relating to the handling of drugs;
- C. Any pending legal charges or probationary requirements;

D. Respondent's professional responsibilities and duties as they pertain to his current employment.

E. Respondent must report any adverse actions taken by Respondent's employer as well as any arrests or the filing of criminal charges against Respondent.

Thirty (30) days from the date WHPS notifies Respondent that he is not required to participate in the WHPS program, the first report shall be due, and reports shall be submitted every six (6) months thereafter for a period of two (2) years from the WHPS notification date.

4.4 If Respondent is not employed as a registered nurse, Respondent shall submit quarterly declarations, under penalty of perjury, on forms provided by the Commission stating dates of unemployment in lieu of the semi-annual employer reports required above.

4.5 Respondent shall obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.6 Respondent shall assume all costs of complying with this Agreed Order.

4.7 Respondent shall inform the Commission and the Adjudicative Clerk Office in writing, of changes in her residential and/or business address within thirty (30) days of such change.

4.8 The effective date of this Agreed Order is that date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. Respondent shall not submit any fees or compliance documents until after the effective date of the Agreed Order.

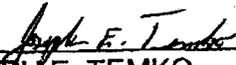
5: FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this order. Failure to comply with the terms and conditions of this order may result in suspension of the credential after a show cause hearing. If Respondent fails to comply with the terms and conditions of this order, the Commission may hold a hearing to require Respondent to show cause why the credential should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW

18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

6: ACCEPTANCE

I, JOSEPH E. TEMKO, Respondent, have read, understand and agree to this Agreed Order on Reinstatement. This Agreed Order on Reinstatement may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order on Reinstatement



JOSEPH E. TEMKO
RESPONDENT

11-25-09

DATE



ZENON OVERTZ, WSBA #6080
ATTORNEY FOR RESPONDENT

12-1-09

DATE

7: ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law and Agreed Order on Reinstatement.

DATED: DECEMBER 21, 2009

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
NURSING CARE QUALITY ASSURANCE
COMMISSION

Susan Wong
PANEL CHAIR

PRESENTED BY:

Michael Ellsworth
MICHAEL ELLSWORTH, WSBA #39531
DEPARTMENT OF HEALTH STAFF ATTORNEY

December 21, 2009
DATE