



Possession of cocaine is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of cocaine 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.

7. On October 1, 2007, Respondent was referred to the Extended Evaluation Program; however upon further evaluation, he was diagnosed with a Substance Use Disorder and referred to TPAPN, in which he failed to enroll.
8. The Respondent's conduct described in the preceding Findings of Facts were 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 Six (6), Respondent states that his positive screen was a shock to him and his employer. He further states that he does not use drugs and did not know how a positive screen could have occurred.
11. In response to Finding of Fact Number Seven (7), Respondent's attorney, Sherry M. Statman states, "In October of 2007, Mr. Cervera was referred to the TPAPN Extended Evaluation Program by Mr. Diggs. Although he had every intention of participating in the TPAPN program, Mr. Cervera became distracted and forgot to initiate the evaluation. On June 20, 2008, Mr. Cervera contacted the program and is taking the necessary steps to participate. Mr. Cervera understands that it was his responsibility to contact the program in October and apologizes for his failure to do so."
12. Formal Charges were filed on July 6, 2007, and mailed to Respondent on July 10, 2007.
13. Respondent's conduct described in Finding of Fact Number Six (6) resulted from 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 violation of Section 301.452(b)(9),(10)&(12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(5),(10)(A)(D) &(11)(B).
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 188473, heretofore issued to ERNESTO CERVERA, including revocation of Respondent's license to practice vocational 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 ERNESTO CERVERA, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of this Order for appropriate notation.

(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 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 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.

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RESPONDENT'S CERTIFICATION

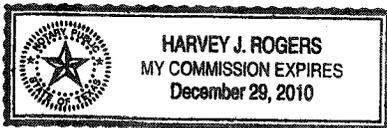
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violation alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By 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 to practice vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 15 day of Sept, 2008.

  
ERNESTO CERVERA, Respondent

Sworn to and subscribed before me this 15 day of Sept, 2008.

SEAL



  
Notary Public in and for the State of Texas

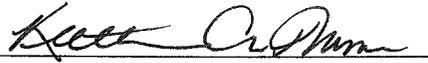
Approved as to form and substance.

  
SHERRY M. STATMAN, Attorney for Respondent

Signed this 15 day of Sept, 2008.

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 15th day of September, 2008, by ERNESTO CERVERA, Vocational Nurse License Number 188473, and said Order is final.

Entered and effective this 22nd day of September, 2008.



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

