

**BEFORE THE OREGON  
STATE BOARD OF NURSING**

**In the Matter of**

**Daniel Ojeda, CNA Applicant**

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**FINAL ORDER**

**Reference No. 11-02431**

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The Oregon State Board of Nursing (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including Certified Nursing Assistants, in the State of Oregon. Daniel Ojeda (Applicant) applied for certification as a Certified Nursing Assistant in the State of Oregon.

This Matter was considered by the Board on September 21, 2011. Applicant did not appear personally. The issue for the Board was whether to approve the Stipulation signed by Applicant on September 14, 2011 and so dispense with this Matter pursuant to ORS 183.417(3).

Upon review of the Stipulation and the agency file in this Matter, the Board finds that reasonable factual and legal grounds exist to support approval of the Stipulation. It is hereby

**ORDERED** that the Stipulation signed by Applicant on September 14, 2011 be approved and by this reference incorporated herein, and it is further

**ORDERED** that the Board accept the Stipulation for Reprimand of Daniel Ojeda's Certified Nursing Assistant certificate and that the Stipulation for Reprimand be adopted.

DATED this \_\_\_\_\_ day of September, 2011

**FOR THE BOARD OF NURSING OF THE STATE OF OREGON**

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Patricia Markesino, RN  
Board President

**BEFORE THE OREGON  
STATE BOARD OF NURSING**

**In the Matter of** ) **STIPULATION FOR REPRIMAND**  
**Daniel Ojeda, CNA Applicant** )  
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 )  
 ) **Reference No. 11-02431**

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The Oregon State Board of Nursing (Board) is the state agency responsible for the certification and regulation of Certified Nursing Assistants (CNA) in Oregon.

On or about February 15, 2011, Daniel Ojeda, hereinafter referred to as “Applicant,” submitted an application to the Board for certification as a CNA.

In that application for certification, Applicant was asked the following question:

“Have you ever been arrested, charged with, entered a plea of guilty, no contest, convicted of or been sentenced for any criminal offense either misdemeanor or felony, including driving under the influence, in any state? (The fact that a conviction has been pardoned, expunged (excluding juvenile record expungement), dismissed or that your civil rights have been restored does not mean that you answer this question ‘NO’; you would answer ‘YES’ and give details on the charge).”

Applicant answered “yes” to the question above and disclosed the following arrests:

- 1985 Theft
- 1986 Contempt of Court
- 2007 Driving Under the Influence of Intoxicants

However, a criminal background check revealed additional arrests that were not disclosed by Applicant. Applicant has the following arrests:

- February 16, 1985 - Driving Under the Influence of Intoxicants (adjudication withheld)
- March 8, 1985 - Driving While Suspended (convicted)
- March 23, 1985 - Theft 2 (convicted)
- December 27, 1986 - Contempt of Court (convicted)
- February 18, 1990 - Driving Under the Influence of Intoxicants (convicted)
- January 22, 2001 - Disorderly Conduct and Harassment (diversion/dismissed)
- January 21, 2007 - Driving Under the Influence of Intoxicants (diversion/dismissed)
- July 26, 2007 - Criminal Driving with Suspended/Revoked License (reduced to violation, convicted).

At the request of Board staff, Applicant explained these arrests and his failure to disclose his complete arrest history.

Applicant was arrested for Driving Under the Influence of Intoxicants (DUII) in 1985. He completed court requirements and the charge was dismissed. As a result of the DUII charge,

Applicant's driver's license was suspended. Applicant continued to drive to and from work and was convicted of Driving While Suspended in 1985. Applicant acknowledged that he should not have continued to drive, but he explained he needed to drive to work to support his family.

Also in 1985, Applicant was arrested for theft after he tried to steal a pair of jeans from a store. He was 19 years old at the time. He pled guilty of theft and was sentenced to two years of probation, one day in jail and ordered to pay a fine.

In 1986 Applicant witnessed a stabbing assault at a gas station. He did not know the victim or the perpetrator prior to the incident. Applicant was subpoenaed as a witness in the trial and failed to appear in court. He was charged with Contempt of Court and served 10 days in jail.

In 1990 Applicant was driving home from a birthday party and was stopped for a minor driving violation. Applicant had been drinking and was arrested for DUII, for which he was convicted. He was sentenced to sixteen months of probation and was ordered to complete an alcohol treatment program. He completed that program on March 14, 1991.

In 2001 Applicant was arrested for Harassment and Disorderly Conduct after getting into an argument with his wife. Applicant explained that he and his wife got into a heated argument and they both raised their voices. He stated there was no physical contact between them during the argument. Applicant entered a diversion program and completed an anger management class. The charges were ultimately dismissed in February 2002.

On January 21, 2007 Applicant was arrested again for DUII. The police report showed that officers observed Applicant drive out of the parking lot of a bar with three passengers. Officers continued to watch his vehicle. Officers initiated a stop after Applicant made a right turn without proper use of a turn signal. The officer smelled alcohol on Applicant's breath and asked him to perform field sobriety tests. Applicant refused. Applicant did not take a breathalyzer test either. Applicant explained that he did not believe he was intoxicated on the night of his arrest. He felt as though officers were targeting him because he had been at a bar. Applicant stated he was very frustrated during the incident and his refusal to take a breathalyzer test was poor judgment on his part. Applicant maintains that he was not driving under the influence.

Applicant completed a diversion program for his 2007 DUII charge, and the charge was ultimately dismissed. As part of his diversion requirements, Applicant was assessed by Polk County Mental Health and Addiction Services on May 14, 2007. He was diagnosed with Alcohol Abuse and his evaluator recommended Applicant attend Level 1 Outpatient treatment. Applicant completed the recommended treatment on September 28, 2007.

Applicant stated that he does not drink alcohol regularly and will often not consume alcohol for months at a time. He further stated that he generally limits his consumption of alcohol to avoid intoxication.

Applicant explained his failure to disclose his complete arrest history on his CNA application. He stated that he limited his disclosure to the arrests that he believed would appear on his criminal background check. He explained that he was afraid that his application would not be

approved given the number of arrests in his past. Applicant was remorseful for failing to disclose all prior arrests. Applicant stated he is not proud of his past and the mistakes he has made, but he has moved forward from those mistakes.

Applicant provided a letter from his instructor at his nursing assistant program. She stated that Applicant was an exemplary student and she has no doubt about his honesty and integrity. She stated that Applicant was respectful and handled difficult situations with maturity. The residents he served were pleased with his professionalism.

Applicant worked for several months, providing care for elderly residents at a retirement community. His employer was pleased with his performance and he received a "Loving Award" in February 2011 for exhibiting good character in the performance of his duties. Applicant stated that this work was very rewarding to him and he wishes to continue to serve elderly residents.

The above actions constitute violations of the provisions of ORS 678.442(2)(b) and (f); and OAR 851-063-0090(9)(b), which provide as follows:

**ORS 678.442 Certification of nursing assistants; rules.**

(2) In the manner prescribed in ORS chapter 183, the board may revoke or suspend a certificate issued under this section or may reprimand a nursing assistant for the following reasons:

- (b) Any willful fraud or misrepresentation in applying for or procuring a certificate or renewal thereof.
- (f) Conduct unbecoming a nursing assistant in the performance of duties.

**OAR 851-063-0090 Conduct Unbecoming a Nursing Assistant**

A CNA, regardless of job location, responsibilities or use of the title "CNA", who, in the performance of nursing related duties, may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Conduct unbecoming a nursing assistant includes but is not limited to:

- (9) Conduct related to the certificate holder's relationship with the Board:
  - (b) Failing to answer truthfully and completely any question asked by the Board on an application for initial certification, renewal of certification or recertification.

Applicant admits to the above violations and wishes to cooperate with the Board in resolving the present matter.

Therefore the following will be proposed to the Board and is agreed to by Applicant:

**That the Certified Nursing Assistant certificate of Daniel Ojeda be reprimanded.**

Applicant understands that the conduct resulting in the violations of law described in this stipulation are considered by the Board to be of a serious nature and if continued, constitutes a danger to public health and safety.

Applicant understands that in the event he engages in future conduct resulting in violations of

law or the Nurse Practice Act, the Board may take further disciplinary action against his certificate, up to and including revocation of his certificate as a CNA and/or any other certificate or license he may obtain in the future.

Applicant understands that this Stipulation will be submitted to the Board of Nursing for their approval and is subject to the Board's acceptance. Applicant understands that if this Stipulation is accepted, the Board will issue a Final Order based thereon. Applicant understands that this Stipulation will become a matter of public record at such time as the Board issues a Final Order adopting it.

Applicant understands that by signing this Stipulation, he waives any and all rights to notice and contested case hearing under the Oregon Administrative Procedures Act (ORS Chapter 183), and any and all rights to appeal or otherwise challenge this Stipulation and any Final Order issued based thereon.

Applicant acknowledges that no promises or representations have been made or used to induce him to sign this Stipulation.

Applicant has fully read this Stipulation, understands this Stipulation completely and freely and voluntarily signs this Stipulation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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Daniel Ojeda

FOR THE OREGON STATE BOARD OF NURSING

\_\_\_\_\_  
Marilyn Hudson RN, MSN, CNS, FRE  
Investigation Manager  
Investigation Department

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Shanon Rahimi  
Investigator  
Investigation Department