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

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse	§	
License Number 722748	§	REINSTATEMENT
issued to DON POLICARPIO MEILY	§	AGREED ORDER

On this day came to be considered by the Texas Board of Nursing, hereinafter referred to as the Board, the Petition for Reinstatement of Registered Nurse License Number 722748, held by DON POLICARPIO MEILY, hereinafter referred to as Petitioner.

An informal conference was held on February 7, 2012, at the office of the Texas Board of Nursing, in accordance with Section 301.464, Texas Occupations Code.

Petitioner appeared in person. Petitioner was represented by Jon E. Porter, Attorney at Law. In attendance were Mary Beth Thomas, PhD, RN, Director of Nursing, Executive Director's Designee; Jena Abel, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director of Enforcement; and Diane E. Burell, Investigator.

FINDINGS OF FACT

1. Prior to institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Petitioner and Petitioner was given an opportunity to show compliance with all requirements of the law for retention of the license.

2. Petitioner waived notice and hearing, and consented to the entry of this Order.

3. Petitioner received a Baccalaureate Degree in Nursing from Saint Jude College, Manila, Philippines, on October 1, 1996. Petitioner was originally licensed to practice professional nursing in the State of Texas on January 3, 2006.

4. Petitioner's professional nursing employment history includes:

1/07 - 7/10	Charge Nurse	Renaissance Hospital Dallas, Texas
2/07 - 10/07	Staff Nurse	Centennial Medical Center Frisco, Texas
9/07 - 3/08	Staff Nurse	Baylor University Medical Center Dallas, Texas
12/08 - 2/09	Charge Nurse	Dallas Regional Medical Center Dallas, Texas
2/09 - 7/10	Staff Nurse	Medical Center of McKinney McKinney, Texas
9/10 - present	Not employed in nursing	

5. On July 23, 2010, Petitioner's license to practice professional nursing in the State of Texas was revoked by the Texas Board of Nursing. A copy of the July 23, 2010, Opinion and Order of the Board, is attached and incorporated, by reference, as a part of this Order.

6. On or about December 13, 2011, Petitioner submitted a Petition for Reinstatement of License to practice professional nursing in the State of Texas.

7. Petitioner presented the following in support of his petition:

   7.1. Letter, dated February 1, 2012, from Anna Shursen PhD, LPC, states Petitioner has been an attentive and invested participant in treatment. He participated in discussions and has his assignments prepared. He appears to have gained good insight and understanding from group. Ms. Shursen would certainly recommend that he be allowed to regain his nursing license. She believes Petitioner has received sufficient treatment at this time.

   7.2. Certificate of completion of a Professional Boundaries course dated August 21, 2011.

   7.3. Final Order issued April 10, 2011, by the State of Florida Board of Nursing accepting Petitioner's voluntary surrender of his nursing license.

7.4. Letter of support, dated July 5, 2010, from Brenda Meily, states she has known Petitioner half of her life. Petitioner has been working hard to prove that he is worthy of practicing nursing again. Petitioner is a very competent nurse clinically. His experience as a charge nurse is being put to waste without him being able to practice as a nurse when he could be using it to help the sick patients. Petitioner has had two (2) years of therapy and has shown significant sincerity in his therapy which emphasizes the fact that he is safe to practice nursing. Ms. Meily is hoping the Board will give Petitioner a second chance.

7.5. Letter of support, dated June 15, 2011, from Muluneh Abebe, states he has worked with Petitioner as his manager at AMI Monitoring Inc. for almost a year and he is one of the most reliable EKG technicians. During the time Mr. Abebe worked with Petitioner, he saw his sincerity towards patients, especially when he dealt with them through the phone. He easily made the patients feel at ease despite their chest pains or other symptoms. Petitioner is very reliable. He always assisted other technicians. Petitioner should be practicing his profession as a nurse with the knowledge and skills that he has. Mr. Abebe personally believes Petitioner will not exhibit further inappropriate behavior. His insight towards healthcare is solid in terms of preservation of patient's dignity and respect which he often emphasizes.

7.6. Letter of support, dated June 25, 2011, from Jean Scheu, states she has known Petitioner and his wife for almost ten (10) years. As a friend, Ms. Scheu has seen Petitioner and his wife in almost every aspect of their lives. They are a very happy family and God fearing. Petitioner and his family have remained strong and positive in spite of this. Petitioner never gave up and proved that he can raise and support his family in spite of the situation they are in. Petitioner has done everything to prove that he is worthy of having his nursing license back. He is attending therapy and reads nursing topics to update his nursing knowledge. He keeps himself focused on his job and keeps his hopes of getting his license back. Ms. Scheu has never seen Petitioner behave inappropriately and she firmly believes that he will not act inappropriately towards patients when he gets his license back.

7.7. Letter of support, dated June 6, 2011, from Caroline Valencia, states she was a Manager over the EKG Department at AMI Monitoring Inc., and has worked with Petitioner for almost a year until May 2011. Having worked with Petitioner for the past year, Ms. Valencia personally observed his commitment to the welfare of his patients and his integrity. Petitioner can put patients at ease when they are very frightened due to chest pains and cardiac related symptoms. Patients often called back to inform Ms. Valencia that Petitioner was wonderful and very knowledgeable and professional in the way he spoke to them and treated them. Petitioner is wasting skills and knowledge by not having his RN license. Ms. Valencia absolutely believes that Petitioner would never do any harm or conduct himself inappropriately or unprofessionally towards anyone. He is caring, professional, ethical and has integrity and should be reinstated as a RN.

7.8. Letter of support, dated June 3, 2011, from Yared Hailemariam, MD, states he is currently working as EKG Department Medical Director at AMI Monitoring Inc, and works with Petitioner, one of the EKG technicians. Petitioner is very dependable in his EKG interpretation skills. He shares a lot of information based on his BSN degree background

and from his clinical experience as a nurse. Dr. Hailemariam has observed Petitioner's commitment in the medical field and his professionalism towards dealing with patients. Dr. Hailemariam recommends that Petitioner be allowed to practice as a Registered Nurse again for having excellent skills and knowledge, especially in the Cardiology area. The public will benefit with him working as a RN because of his commitment in helping people and his clinical experience. Petitioner has always been professional with his co-workers and in dealing with patients. Dr. Hailemariam finds no reason that he will engage in any inappropriate behavior.

7.9. Letter of support from Belinda Tabada, RN, states she has worked with Petitioner for more than a year. Petitioner is one of the best preceptors they have and the best IV starter. He is very passionate about his work and expresses real empathy towards patients. Petitioner deserves to have his license back. He has been very professional.

7.10. Letter of support from Nancy Suarez-Doctura, RN, states she has known Petitioner for more than ten (10) years. Ms. Suarez-Doctura knows Petitioner as a God fearing person, a very dedicated father to this kids and a loving husband to his wife. He is a very competitive nurse. Petitioner is not just an ordinary nurse. His clinical experience is being put to waste without him being able to practice. Petitioner deserves to have his license back. He volunteered himself to therapy which should be taken into consideration because that alone is a serious indication of his willingness to change things. Ms. Suarez-Doctura firmly believes that once Petitioner gets his license back, he will not act inappropriately towards patients.

8. On February 27, 2012, Dr. John Lehman conducted two (2) follow-up interviews with Petitioner. Dr. Lehman states Petitioner was initially seen by him on April 1, 2009, following allegations of sexual impropriety. At that evaluation, following a failed polygraph, Petitioner admitted to inappropriate behavior with the one (1) victim known at the time. Over the next few months, two (2) other patient victims were also identified. Petitioner has followed the stipulations of the 2009 recommendations and has been seeing Dr. Shursen for almost three (3) years, participating in weekly sex offender treatment groups and having semi-annual polygraphs. Dr. Lehman feels Petitioner does not pose a threat of inappropriate sexual violations and he should be able to practice as a nurse. Petitioner appears to have grasped the issues regarding sexual boundaries and has involved himself in extensive therapy. Dr. Lehman recommends that Petitioner complete a polygraph at least once a year for the next two (2) years, and continues in therapy with Dr. Shursen to focus on anger management and the appropriate expression of and addressing of anger issues.

CONCLUSIONS OF LAW

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

2. Pursuant to Section 301.467, Texas Occupations Code, the Board may refuse to issue or renew a license, and may set a reasonable period that must lapse before reapplication. Pursuant to 22 TEX. ADMIN. CODE §213.26, the Board may impose reasonable conditions that a Petitioner must satisfy before reissuance of an unrestricted license.

ORDER

IT IS THEREFORE AGREED, subject to ratification by the Texas Board of Nursing, that the petition of DON POLICARPIO MEILY, Registered Nurse License Number 722748, to practice nursing in the state of Texas, be and the same is hereby GRANTED, AND SUBJECT TO THE FOLLOWING STIPULATIONS SO LONG AS THE PETITIONER complies in all respects with the Nursing Practice Act, Texas Occupations Code, §301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 et. seq. and the stipulations contained in this Order:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Petitioner's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

(1) PETITIONER SHALL pay all re-registration fees and be issued a license to practice nursing in the State of Texas, which shall bear the appropriate notation. Said licenses issued to DON POLICARPIO MEILY, shall be subject to the following agreed post-licensure stipulations:

(2) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in Texas nursing jurisprudence and ethics. PETITIONER SHALL obtain Board approval of the course prior to enrollment only if the course is <u>not</u> 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) 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 Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. PETITIONER 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 PETITIONER'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.bon.state.tx.us/disciplinaryaction/stipscourses.html.*

(3) PETITIONER SHALL, within one (1) year of relicensure, successfully complete a course in "Respecting Professional Boundaries," a 3.9 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, PETITIONER SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Information regarding Board approved courses may be found at the following Board website address: http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html.*

(4) PETITIONER SHALL, within one (1) year of relicensure, successfully complete the course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension. In order to receive credit for completion of this program, PETITIONER SHALL SUBMIT the continuing education certificate of completion for this program to the Board's office, to the attention of Monitoring. This course is to be taken in addition to any

continuing education requirements the Board may have for relicensure. *Board-approved courses may be found at the following Board website address: http://www.bon.texas.gov/disciplinaryaction/stipscourses.html.*

IT IS FURTHER AGREED, SHOULD PETITIONER CHOOSE TO WORK AS A NURSE IN TEXAS, PETITIONER WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATION PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATION PERIOD:

(5) PETITIONER SHALL notify all future employers in nursing of this Order of the Board and the stipulations on PETITIONER'S license(s). PETITIONER SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment.

(6) PETITIONER SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the PETITIONER by the Board, to the Board's office within five (5) days of employment as a nurse.

(7) For the first year of employment as a Nurse under this Order, PETITIONER SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as PETITIONER and immediately available to provide assistance and intervention. PETITIONER SHALL work only on regularly assigned, identified and predetermined unit(s). The PETITIONER SHALL NOT be employed by a nurse registry, temporary

nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(8) For the remainder of the stipulation period, PETITIONER SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as PETITIONER, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the PETITIONER is currently working. PETITIONER SHALL work only regularly assigned, identified and predetermined unit(s). PETITIONER SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. PETITIONER SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(9) PETITIONER SHALL CAUSE each employer to submit, on forms provided to the PETITIONER by the Board, periodic reports as to PETITIONER'S capability to practice nursing. These reports shall be completed by the nurse who supervises the PETITIONER. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for two (2) year(s) of employment as a nurse.

(10) PETITIONER SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. PETITIONER SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the PETITIONER'S progress in therapy, rehabilitation and capability to safely practice nursing. The report must indicate whether or not the PETITIONER'S stability is sufficient to provide direct patient care safely. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended beyond the initial three (3) months, the reports shall then be required at the end of each three (3) month period for the remainder of the stipulation period, or until PETITIONER is dismissed from therapy.

(11) PETITIONER SHALL submit to a polygraph examination each year for a period of two (2) years. The polygraph examination must be conducted by a Board-approved polygraph examiner. PETITIONER SHALL CAUSE the performing polygraph examiner to send a report of the results of the examination to the Board office.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from PETITIONER's license to practice professional nursing in the State of Texas and PETITIONER shall be eligible for nurse licensure compact privileges, if any.

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PETITIONER'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Reinstatement Agreed Order. I certify that my past behavior, except as disclosed in my Petition for Reinstatement of Licensure, has been in conformity with the Board's professional 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 convictions, such as: conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

I have reviewed this Order. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order. I waive judicial review of this Order. I understand that this Order is subject to ratification by the Board. When this Order is ratified, the terms of this Order become effective, and a copy will be mailed to me. I agree to inform the Board of any other fact or event that could constitute a ground for denial of licensure prior to reinstating my license to practice professional nursing in the state of Texas. I understand that if I fail to comply with all terms and conditions of this Order, my license to practice professional nursing in the State of Texas will be revoked, as a consequence of my noncompliance.

Signed this 31ST day of MARCH, 2012

DON POLICARPIO MEILY, Petitioner

Sworn to and subscribed before me this 31st day of March, 2012

SEAL

MICHELLE L. LYNCH
Notary Public, State of Texas
My Commission Expires
June 06, 2015

Notary Public in and for the State of Texas

Approved as to form and substance.

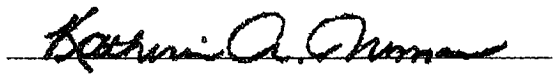
JON E. PORTER, Attorney for Petitioner

Signed this 2nd day of April, 2012

722748:007

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Reinstatement Agreed Order that was signed on the 31st day of March, 2012, by DON POLICARPIO MEILY, Registered Nurse License Number 722748, and said Order is final.

Effective this 7th day of May, 2012.



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

DOCKET NUMBER 507-09-4355

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 722748	§	OF
DON POLICARPIO MEILY	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: DON POLICARPIO MEILY
C/O VICTORIA WARNER
11102 LIBERTY GROVE
ROWLETT, TX 75089

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 22-23, 2010, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of Don Policarpio Meily without changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. Staff filed exceptions to correct two technical errors in the PFD regarding the name of the Board's testifying nursing practice consultant and the identity of a testifying witness. The Respondent did not file any exceptions. The ALJ issued a ruling on June 22, 2010, granting Staff's exceptions. The ALJ's order of June 22, 2010, corrected the name of the Board's testifying nursing practice consultant on page 6 of the PFD and modified Finding of Fact Number 17 to correctly identify the testifying witness.

The Board, after review and due consideration of the PFD, Staff's exceptions, the ALJ's order of June 22, 2010, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD, including Finding of Fact Number 17 which was modified by the ALJ in his order of June 22, 2010, as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 722748, previously issued to DON POLICARPIO MEILY, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 722748, previously issued to DON POLICARPIO MEILY, 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 privileges, if any, to practice nursing in the State of Texas.

Entered this 23rd day of July, 2010.

TEXAS BOARD OF NURSING

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-09-4355 (May 3, 2010).

SOAH DOCKET NO. 507-09-4355

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE NO. 722748	§	
ISSUED TO	§	OF
	§	
DON POLICARPIO MEILY	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Don Policarpio Meily (Respondent) for violating the Nursing Practice Act[1] and the Board's rules.[2] Staff sought to revoke Respondent's license as a registered nurse (RN) and sought to impose on Respondent administrative costs of the proceeding pursuant to Code § 301.461. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked but that administrative costs not be imposed on Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing originally convened July 30, 2009, before ALJ Stephen J. Pacey in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel. Respondent was represented by attorney Victoria Warner. The hearing was adjourned that day. Staff's August 21, 2009 brief included a motion to reopen the evidence on the basis that Respondent had additional allegations of sexual conduct with patients and a coworker.

On September 3, 2009, the ALJ granted the motion on the basis of judicial economy. New matters that are of the same nature as the previous allegation should be heard together. After the ALJ instructed Staff to amend its notice of hearing to include the new allegations, Staff, on October 20, 2009, issued the First Amended Notice of Hearing setting the hearing for January 28, 2010. On that date, the ALJ reconvened and adjourned the hearing with the same attorneys representing the parties.

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[1] TEX. OCC. CODE (Code) ch. 301 *et seq.*

[2] 22 TEX. ADMIN. CODE (TAC) ch. 211 *et seq.*

The record closed on March 2, 2010, at the conclusion of the briefing schedule established by the ALJ.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. APPLICABLE LAW

RNs are subject to disciplinary action by the Board, including license suspension or revocation,[3] for engaging in unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public.[4] Additionally, the Board may take disciplinary action against an RN who fails to care adequately for a patient or conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to a risk of harm.[5]

The Board's rules have defined unprofessional conduct for which RNs may be disciplined to include: causing or permitting physical, emotional, or verbal abuse or injury or neglect to the client or the public;[6] violating professional boundaries of the nurse/client relationship including physical, sexual, or emotional exploitation;[7] or engaging in sexual conduct with a client, touching a client in a sexual manner, or requesting or offering sexual favors by language or suggestive behavior.[8]

The Board's rules also provide for disciplinary sanctions against RNs who fail to conform to the minimum standards of acceptable nursing practice, regardless of whether actual injury to any person was sustained. These minimum standards require that RNs recognize and maintain professional

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[3] Code § 301.453(a).

[4] Code § 301.452b(10).

[5] Code § 301.452b(13).

[6] 22 TAC § 217.12(6)(C).

[7] 22 TAC § 217.12(6)(D).

[8] 22 TAC § 217.12(6)(E).

boundaries of the nurse-client relationship,[9] and that they implement measures to promote a safe environment for clients and others.[10]

The Board is required to adopt a schedule of disciplinary sanctions to ensure that the severity of sanctions imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.[11] In determining the appropriate disciplinary action, the Board is required to consider whether previous disciplinary action has been imposed, whether multiple violations were committed, the seriousness of the violation(s), the threat to public safety, and any mitigating factors.[12] A history of disciplinary action or the commission of multiple violations may warrant the imposition of more severe sanctions, including license revocation.[13]

III STAFF'S FORMAL CHARGES

A. Charge One

Charge one was the subject matter of the original hearing. Staff's charge one against Respondent is as follows:

> On March 15, 2008, while employed by Baylor University Medical Center, Dallas, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he inappropriately touched a patient (M.G.) on her perineal area while changing a dressing on her left thigh, constituting grounds for disciplinary action in accordance with Code § 301.452(b)(10)and(13) and in violation of 22 TAC §§ 217.12(1)(B), (6)(D),and (6)(E) and 217.11(1)(A), (B), & (J).

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[9] 22 TAC § 217.11(1)(J).

[10] 22 TAC § 217.11(1)(B).

[11] Code § 301.4531(a).

[12] Code § 301.4531(b).

[13] Code § 301.4531(c).

B. Charge Two

Charge two was part of the subject matter of the second hearing. Staff's charge two against Respondent is as follows:

> On July 8, 2008, while employed by Centennial Medical Center, Frisco, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he kissed a patient (S.I.) on the mouth, stroked her thigh and leaned over her, placing his erect penis on her, constituting grounds for disciplinary action in accordance with Code § 301.452(b)(10)and(13) and in violation of 22 TAC §§217.12(1)(B), (6)(D),and (6)(E) and 217.11(1)(A), (B), and & (J).

C. Charge Three

Charge three was part of the subject matter of the second hearing. Staff's charge three against Respondent is as follows:

> On October 3, 2008, while employed by Centennial Medical Center, Frisco, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he digitally penetrated the vagina of a patient (C.I.) and stroked her clitoris, constituting grounds for disciplinary action in accordance with Code §301.452(b)(10) and (13) and in violation of 22 TAC §§ 217.12(1)(B), (6)(D),and (6)(E) and 217.11(1)(A), (B), & (J).

IV. SUMMARY OF ALLEGATIONS AND EVIDENCE

Staff submitted multiple exhibits and provided testimony of John Lehman, Ph.D., clinical psychologist; David W. Ramsey, polygraph examiner; Denise Benbow, Nursing Practice Consultant; C.I., alleged victim of Charge No. 3; and S.H., alleged victim of Charge No. 2. Respondent also submitted multiple exhibits and provided the testimony of Anna Shursen, Ph.D., a sex offender therapist, and Respondent, who testified on his own behalf.

1. Testimony of John Lehman, Ph.D.

The Board asked Dr. Lehman to evaluate Respondent and make a recommendation. Dr.Lehman testified and reported[14] that Respondent was presented for an evaluation for the Board following allegations that Respondent, while working at Baylor Hospital, violated professional boundaries by inappropriately touching a female patient. Dr. Lehman said that according to the hospital records, M.G. was a post-surgical patient under Respondent's care on March 15, 2008. M.G. had just had her hip fused, and Respondent was in her room to change her dressings and her foley catheter. While changing her dressing, Respondent was accused of touching the patient's inner thigh and perineal area.

Dr. Lehman said that Respondent vehemently denied the allegation in its entirety, and even submitted an affidavit to the Board denying the allegation. Dr. Lehman testified that it was only after Respondent failed the polygraph that he admitted that the allegation was true. According to Dr.Lehman, Respondent's testing shows that he tries to portray a positive image. In Dr. Lehman's opinion, the tests show one who anxiously conforms to other people's expectations and is defensive about admitting psychological problems.

Dr. Lehman recommended that Respondent be involved with therapy from a certified sex offender treatment specialist, and the Board limit his license to non-patient care until he has completed a course of treatment.[15]

2. Testimony of Donald Ramsey

Mr. Ramsey is polygraph examiner with 16 years FBI experience and 7 years NCIS experience. Mr. Ramsey testified that Respondent failed the test when he was asked about the

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[14] Staff's Exh. 12.

[15] Dr. Lehman was not called as a witness at the second hearing; consequently, his specific testimony is related to Charge No. 1. This limitation does not apply to Dr. Lehman's more general evaluation of Respondent. However, his general evaluation of Respondent is relevant to all three charges.

incident and more specifically, the touching of the inner thigh or other pubic area of the patient for sexual reasons. Mr. Ramsey said Respondent then admitted that he touched her inner thigh and was sexually excited by the action. According to Mr. Ramsey, Respondent admitted touching her in her pubic area explaining that he lost control for a split second.

3. Testimony of Anna Benbow

Ms. Benbow has been an RN since 1984. As a Nurse Practicing Consultant for the Board since 2007, Ms. Benbow answers inquiries about the Nursing Practice Act, and teaches the jurisprudence and ethics course.

Ms. Benbow testified that, according to the guidelines on professional boundaries of the National Council of State Boards of Nursing, sexual misconduct is one of the endpoints of over-involvement that places the patient at risk and would be considered to be a professional boundary violation. She stated that if the allegations against Respondent were proved, revocation of his license would be the appropriate sanction. Ms. Benbow testified on both hearing dates.

In the second hearing date, Ms. Benbow testified that Respondent's license should be revoked because he has a pattern of sexual contact with patients. She said the conduct with both C.I. and S.H. was dishonorable and violated the nurse-patient relationship. According to Ms. Benbow, Respondent exceeding the boundaries of the nurse-patient relationship; consequently, his license should be revoked and he should not receive another license until his therapy is completed and he has completed a risk prevention program.[16]

In Ms. Benbow's opinion, all three women suffered emotional harm, and Respondent's conduct may have caused delayed distress for the patients, which may not be recognized or felt by the by the patient until harmful circumstances occur. She said that C.I. suffered emotional damage that manifested itself in lost weigh and sleeplessness. Ms. Benbow asserted that S.H. felt shocked and

[16] A person is eligible to reapply for a nurse's certificate one year after revocation.

violated and now has a distrust of nurses.

4. Testimony of C.I.

C.I. is an RN who drove from Dallas to testify against Respondent. She was a patient in Centennial Hospital in Frisco, Texas. She testified that on October 1, 2008, she had surgery to repair a hernia, during which the doctors noticed she could have a problem with her ovaries. Rather than close the surgery, the doctors waited until a gynecologist arrived. This caused the duration of the surgery to be greater than usual, and C.I. said she was in excruciating pain. C.I. said that after the recovery nurses left, Respondent while checking her wound touched her clitoris three times and put his finger in her vagina. She said she saw him do it, even though it was done very quickly. She responded by pulling the sheet up and said that had she not done so, he would have stuck his entire finger in her. She said that the surgical procedure was not done vaginally, and she did not have a foley catheter; consequently, Respondent had no reason to be around the pubic area.

In C.I.'s opinion, Respondent did not realize that she knew what he had done; consequently, Respondent continued to come into her room even when he was not her nurse. Over her hospital stay he kissed her on the forehead five to seven times. According to C.I., she was afraid to report Respondent because he might put something in her intravenous (IV) fluid. C.I. said that she had lost weight and sleep as a result of Respondent's conduct.

5. Testimony of S.H.

S.H. also drove from Dallas to testify at the hearing. S.H. testified that she was a patient at Centennial Hospital when Respondent became her nurse in late June of 2008. S.H. said that Respondent would make random comments like how wonderful she smelled, how sexy she was, and how nice she looked. He would also give her hugs. S.H. asserted on or about July 8, 2008, Respondent kissed her on the lips, stroked her thigh very near the pubic area, and while adjusting her IV, he leaned over her and placed an erection on her for about five seconds. She testified that he could have easily gone around the bed to adjust the IV. S.H. said that she was in shock, and felt

violated, angry, and shameful.

6. Testimony of Respondent

After initially lying about the incident to the hospital, Dr. Lehman, his wife, and through affidavit[17] to the Board, Respondent admitted that he had touched patient M.S. in the perinial area. At the hearing, Respondent testified that he became sexually aroused while checking the female patient's upper thigh dressing and touched the patient from the vulva to the anus. Respondent stated that he lied because he was in denial and had fear and anxiety that his wife would find out. Respondent said he was fired by Baylor University Medical Center over this incident.

In response to questioning by Staff, Respondent admitted to incidents with Elizabeth Rodriguez a fellow nurse at Centennial Medical Center. Respondent testified that in October 2008, he tickled and tried to hug Ms. Rodriguez. He testified and she explained in an e-mail that he asked for her phone number, tried to hug her, tried to kiss her on the lips but like a friend, and after grabbing a hook on her pants and pulling, the top of her underwear was showing. Respondent said that she filed sexual harassment charges. Respondent said he did not want Centennial to continue to investigate this and the other two charges, so he resigned on October 23, 2008.[18]

Respondent vehemently denied both C.I.'s and S.H.'s testimony. He portrayed S.H. as bi-polar and said that she was admitted to the hospital after taking 20 Darvocets, which was eventually diagnosed as an accidental overdose. According to Respondent, SH told him that she appreciated his care, and she pulled Respondent down toward her and attempted to give him a goodbye kiss on his cheek, but their lips briefly brushed. Respondent said that he reciprocated and gave her a goodbye hug. Respondent testified that even thought their lips brushed, he did not stroke her legs in a sexual manner. According to Respondent, he may have leaned against S.H. to adjust her IV, but he never did so with an erection. He said that he was not attracted to S.H., so he was not sexually aroused.

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[17] Staff's Exh. 5.

[18] Staff did not file charges concerning the Rodriguez incident.

Respondent described S.H. as a drug seeker who seeks retribution if someone fails to give her the drugs she wants when she wants them.

Respondent testified that Dr. Lehman prescribed therapy for Respondent and gave him a list of sex offender providers. From that list, Respondent chose Anna Shursen, Ph.D. Respondent noted that he has been to over 35 therapy sessions. In his opinion, he is a much better mental frame of mind today after his therapy. He noted that he has not had any patient's sexual allegation against him since 2008, and he was picked employee of the month by his current employer. Respondent desires to retain his nurse's license and is willing on taking a polygraph test concerning charge two and three.

7. Testimony of Anna Shursen, Ph.D.

Dr. Shursen testified that Respondent is doing well in therapy. She said he has invested in the program and participates in discussion. According to Dr. Shursen, Respondent will complete the sexual history module and take his sex history polygraph in February and then move into other assignments such as the Relapse Prevention workbook. She noted that Respondent takes responsibly for the initial charge, but denies the additional charges.

Dr. Shursen was insistent that Respondent is a very low risk to relapse. She based this opinion on a number of factors. Dr. Shursen explained that Respondent has a very good control group with his wife, friends, and fellow workers. She testified that she has recently given Respondent a battery of tests including the Dynamic Risk Assessment test. Dr. Shursen said that these tests indicate that Respondent is a very low risk to reoffend, is not a sexual deviant, and has less than 10% risk of a relapse.

Dr. Shursen testified that Respondent should be finished with therapy this summer. She noted that Respondent should keep his license and continue to treat patients because, in her opinion, there is no danger of his reoffending.

V. ANALYSIS AND RECOMMENDATION

A. Violations

The evidence in this case reveals that three different women, with no suggested ties to one another, made allegations at different times that Respondent, while working as an RN, engaged in inappropriate and unwelcome contact with them, which made them feel uncomfortable and upset. Respondent has admitted to touching patient M.G. in the perineal region and experiencing sexual excitement; therefore, this violation will not be mentioned further in this violation section. Respondent denied all of the allegations and provided similar, but exculpatory versions of the events described by each of the women. If this were a "he-said/she-said" case, concerning a single incident, it would be much more difficult to determine whether a violation occurred. But this is a "he-said/they-said" case. And an examination of the evidence, taken as a whole, indicates that it is more likely than not that Respondent engaged in several instances of unprofessional conduct that violated the Board's rules.

In order to find otherwise, the ALJ would have to find that the witnesses who testified about Respondent's conduct were either lying or mistaken. And there is no evidence to suggest that they were either. The evidence does not substantiate any motives for any of the witnesses to lie, despite Respondent's purely speculative and unconvincing attempts to suggest such motives. Futher, both these witnesses drove from Dallas to Austin to testify against Respondent. It appears highly unlikely that the witnesses would voluntarily drive that far and lie.

Respondent asserted that in C.I.'s testimony she was very vague about many details, and she was so overwhelmed with all the other events occurring her life at that time, that her memory and judgment were impaired. The ALJ does not find this persuasive. Except for the initial sexual contact, Respondent's conduct to C.I.was the same or similar to that described by S.H. and M.G. Respondent's claim that SH had issues outside the scope of this hearing also is unpersuasive.

Based on the above analysis, the ALJ finds that the preponderance of the evidence establishes that Respondent is subject to disciplinary sanctions for committing multiple violations of the Board's rules prohibiting a nurse from violating professional boundaries of the nurse/client relationship, and multiple violations of the rules prohibiting sexual contact with a patient.

B. Sanctions

The board is legally authorized to revoke Respondent's RN license based on the unprofessional or dishonorable conduct that, in the boards opinion, is likely to deceive, defraud, or injure a patient or the public. The Boards Disciplinary matrix categorizes sexual contact with a patient as a Third Tier offense justifying revocation.

Respondent's behavior toward these three women was clearly inappropriate and disturbing, and cannot be ignored or excused. The fact tat Respondent has engaged in multiple violations of professional conduct rules confirms the need for discipline. Based on the totality of the evidence, the ALJ recommends that Respondent's RN license be revoked.

V. FINDINGS OF FACT

1. Don Policarpio Meily (Respondent) is a registered nurse (RN) and holds License Number 722748 issued by the Texas Board of Nursing (Board/Staff).

2. On May 21, 2009, Staff sent Respondent a notice of hearing that notified Respondent of the Formal Charges against him. October 29, 2009, Staff sent Respondent First Amended notice of hearing that notified Respondent of the First Amended Formal Charges against Respondent.

3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

4. The hearing on the merits was first held on July 30, 2009, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties appeared and participated in the hearing. The record was held open to allow briefing.

5. On August 21, 2009, Staff submitted a motion to reopen the evidence on the basis that it desired to file additional allegations.

6. On September 3, 2009, the ALJ granted the motion, and on October 20, 2009, Staff issued a First Amend Notice of Hearing and First Amended Notice of Hearing.

7. The second part of the hearing on the merits was held on January 28, 2010, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties appeared and participated in the hearing. The record was held open to allow briefing and was closed on March 2, 2010.

8. On or about March 15, 2008, while working as a RN at Baylor University Medical Center, Dallas, Texas, Respondent inappropriately touched a patient (M.G.) on her perineal area while changing a dressing on her left thigh.

9. M.G. reported the incident to hospital personnel.

10. M.G. was upset and disgusted by Respondent's behavior.

11. Respondent denied the allegation in its entirety, and even submitted an affidavit to the Board denying the allegation.

12. Respondent admitted that the allegation was true only after he failed a polygraph test. He admitted becoming sexually aroused by the encounter.

13. Baylor University Medical Center fired Respondent.

14. On or about July 8, 2008, while working as a RN at Centennial Medical Center, Frisco, Texas, Respondent kissed a patient (S.H.) on the mouth, stroked her thigh, and leaned over her, placing his erect penis on her.

15. S.H. felt violated, angry, and shameful.

16. On or about October 3, 2008, while working as a RN at Centennial Medical Center, Frisco, Texas, Respondent digitally penetrated the vaginal and stroked the clitoris of a patient (C.I.).

17. S.H. was upset and disgusted by Respondent's behavior, and lost weight and sleep.

18. Respondent resigned from Centennial Medical Center on October 23, 2008, to avoid further investigation.

19. Respondent has consistently denied the accusations of C.I. and S.H.

20. Staff offered no evidence in support of the imposition of the administrative costs of this

proceeding.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 301.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the formal charges and of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Staff had the burden of proving the case by a preponderance of the evidence.

5. Staff established by a preponderance of the evidence that Respondent engaged in sexually inappropriate conduct with M.G., S.H., and C.I., subjecting him to a possible sanction under Code §301.452(b) (10) and 22 Tex. Admin. Code § 217.12(6) (C).

6. The Board should revoke Respondent's license but administrative costs of this proceeding should not be imposed on Respondent.

SIGNED May 3, 2010.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS