



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.  
*Katherine A. Thomas*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse § AGREED  
License Number 595485 §  
issued to MICHAEL FRANK KIRKLAND § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the B considered the matter of MICHAEL FRANK KIRKLAND, Registered Nurse License Nu 595485, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Article 4525(b)(9), Tex. Rev. Civ. Stat. Ann., (effective September 1, 1995) and Section 301.452 (b)(10), Texas Occupations Code (effective September 1, 2007). Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on December 23, 2010, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas.
4. Respondent received an Associate Degree in Nursing from San Jacinto College, Pasadena, Texas, on May 1, 1993. Respondent was licensed to practice professional nursing in the State of Texas on September 22, 1993.
5. Respondent's nursing employment history is unknown.
6. On February 19, 1993, Respondent was denied licensure to practice professional nursing in the State of Texas pursuant to Article 4519, Revised Civil Statutes of Texas, as amended.

Respondent was denied due to convictions for Possession of Marijuana and Driving While intoxicated and his history of intemperate use of Alcohol.

7. On April 15, 1993, in lieu of a formal hearing or Board monitoring, the Board of Nurse Examiners agreed to allow Respondent to participate in the Texas Peer Assistance Program for Nurses (TPAPN). On May 17, 1994, Respondent successfully completed the Texas Peer Assistance Program for Nurses.
8. On or about November 23, 1974, Respondent was arrested by the Abilene Police Department, Abilene, Texas, and charged with MARIJUANA-POSSESS (a Class B misdemeanor), and DRIVING UNDER INFLUENCE LIQUOR (a Class B misdemeanor). Respondent was subsequently convicted of DRIVING UNDER INFLUENCE LIQUOR and sentenced to serve ten (10) days confinement in the Taylor County Jail. Additionally Respondent was ordered to pay a fine and court costs.
9. On or about August 23, 2005, Respondent was arrested for the offense of PUBLIC INTOXICATION, a misdemeanor, by the Pasadena Police Department, Pasadena, Texas. On or about August 23, 2005, Respondent entered a plea of guilty to the charge of PUBLIC INTOXICATION, Cause No. 1280618, (a misdemeanor committed on August 23, 2005), in the Municipal Court of Harris County, Texas. Respondent was assessed a fine.
10. In response to Finding of Fact Number Nine (9), Respondent states that he was taking a boat out to go fishing. He had been drinking alcohol. The boat came off the trailer hitch and rolled into the street. As he was trying to get the boat back onto the hitch the police came and arrested him.
11. On or about September 3, 2005, Respondent was arrested for the offense of DRIVING WHILE INTOXICATED, a Class B misdemeanor, by the Pasadena Police Department, Pasadena, Texas. On or about September 7, 2005, Respondent entered a plea of guilty to the charge of DRIVING WHILE INTOXICATED, Cause No. 1325697, (a misdemeanor committed on September 3, 2005), in the County Criminal Court of Harris County, Texas. Respondent was sentenced to ten (10) days confinement in the Harris County Jail.
12. In response to Finding of Fact Number Eleven (11), Respondent states he was drinking while driving home from work that night. Just before he arrived home he stopped to allow two bicycles to pass. It turned out that the men on the bikes were police officers. They saw the bottle of alcohol on the seat of the car and Respondent was arrested. Respondent further states before this he had been sober for over fifteen (15) years. Respondent states that after he was released he contacted TPAPN and entered an outpatient treatment center, "The Right Step." His contract with TPAPN was scheduled to end September or October 2007.

13. Respondent voluntarily entered TPAPN twice and completed the program satisfactorily both times (on May 17, 1994 and October 2, 2007).
15. 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.

#### CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violations of Article 4525(b)(9), TEX. REV. CIV. STAT. ANN. (effective September 1, 1995), Section 301.452(b)(10), Texas Occupations Code (effective September 1, 2007), and 22 TEX. ADMIN. CODE §217.12(13).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 595485, heretofore issued to MICHAEL FRANK KIRKLAND, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

#### ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a WARNING WITH STIPULATIONS, and RESPONDENT SHALL comply 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 this Order.

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

IT IS FURTHER AGREED and ORDERED that while Respondent's license(s) is/are encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a nurse licensure compact 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 that:

(1)RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is not being offered by a pre-approved provider. Home study courses and video programs will not be approved. In order for the course to be approved, the target audience shall include nurses. It shall be a minimum of six (6) 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. RESPONDENT 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 RESPONDENT'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>.*

**IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING STIPULATIONS FOR ONE (1) YEAR OF EMPLOYMENT. THE LENGTH OF THE STIPULATION PERIOD WILL BE EXTENDED UNTIL SUCH TWELVE (12) 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 STIPULATION PERIOD:**

(2) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the stipulations on RESPONDENT'S license. RESPONDENT 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.

(3) RESPONDENT SHALL CAUSE each present employer in nursing to submit the Notification of Employment form, which is provided to the Respondent by the Board, to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Notification of Employment form, which is provided to the

Respondent by the Board, to the Board's office within five (5) days of employment as a nurse.

(4) RESPONDENT SHALL CAUSE each employer to immediately submit any and all incident, counseling, variance, unusual occurrence, and medication or other error reports involving RESPONDENT, as well as documentation of any internal investigations regarding action by RESPONDENT, to the attention of Monitoring at the Board's office.

(5) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. 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 one (1) year of employment as a nurse.

(6) RESPONDENT SHALL abstain from the consumption of alcohol, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates, and/or the use of controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. **In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to an evaluation by a Board approved physician specializing in Pain Management or Psychiatry. The performing evaluator will submit a written report to the Board's office, including results of the evaluation, clinical indications for the prescriptions, and recommendations for on-going treatment within thirty (30) days from the Board's request.**

(7) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. For the first three (3) month period, random screens shall be performed at least once per week. For the next three (3) month period, random screens shall be performed at least twice per month. For the next six (6) month period, random screens shall be performed at least once per month. For the remainder of the stipulation period, random screens shall be performed at least once every three (3) months. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the RESPONDENT'S place of employment at any time during the stipulation period and require RESPONDENT to produce a specimen for screening.

All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation period.

Any positive result for which the nurse does not have a valid prescription or failure to report for a drug screen, which may be considered the same as a positive result, will be regarded as non-compliance with the terms of this Order and may subject the nurse to further

disciplinary action including EMERGENCY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

(8) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

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

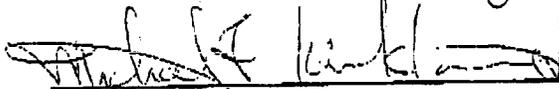
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RESPONDENT'S CERTIFICATION

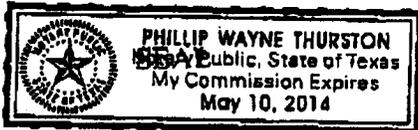
I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the violations alleged herein. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, Order, and any conditions of said Order, to avoid further disciplinary action in this matter. 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 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(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

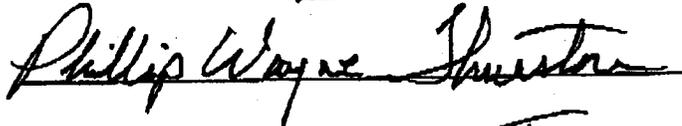
Signed this 13 day of May, 2011.



MICHAEL FRANK KIRKLAND, Respondent

Sworn to and subscribed before me this 13<sup>th</sup> day of May, 2011.





Notary Public in and for the State of Texas

Approved as to form and substance.

  
COURTNEY NEWTON, Attorney for Respondent

Signed this 16<sup>th</sup> day of May, 2011.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 13th day of May, 2011, by MICHAEL FRANK KIRKLAND, Registered Nurse License Number 595485, and said Order is final.

Effective this 14th day of June, 2011.



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