BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Registered Nurse	§	AGREED
License Number 666254	§	
issued to MICHAEL VINCENT FONTANA	§	ORDER

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

On this day the Texas Board of Nursing, hereinafter referred to as the Boar considered the matter of MICHAEL VINCENT FONTANA, Registered Nurse License Numb 666254, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10)&(13) Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the settlement of this matter by entry of this Order offered on January 31, 2011, 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.

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 a Baccalaureate Degree in Nursing from The University of Texas Health Science Center, San Antonio, Texas, in December 1999. Respondent was licensed to practice professional nursing in the State of Texas on February 1, 2000.

5. Respondent's nursing employment history includes:

2/2000 - 1/2005	Emergency Room Nurse	North Austin Medical Center Austin, Texas

Respondent's nursing employment history continued:

12/2004 - 7/2006	Critical Care Nurse	Brackenridge Hospital Austin, Texas
8/2006 - 8/2008	Critical Care Nurse	United States Air Force 59th Surgical Inpatient Squadron Wilford Hall Medical Center Lackland Air Force Base, Texas
8/2008-1/2010	QA/PI Nurse	United States Air Force 59th Surgical Inpatient Squadron Wilford Hall Medical Center Lackland Air Force Base, Texas
1/2010-12/2010	Chief, Life Support	United States Air Force 59th Surgical Inpatient Squadron Wilford Hall Medical Center Lackland Air Force Base, Texas
1/2011 - Present	Not employed in nursing	

6. On or about August 1, 2007, upon renewing his licensure to practice professional nursing with the Texas Board of Nursing, Respondent failed to disclose a pending arrest for "Racing on Highway," and on September 8, 2009, failed to disclose having pled "Nolo Contendere" to, and having received a deferred sentence with court-ordered probation for, "Racing on Highway" (a Class B Misdemeanor offense which occurred on May 3, 2007) in the Bexar County Court at Law 12, Bexar County, Texas, Cause Number 213419.

7. In response to the incidents in Findings of Fact Number Six (6), Respondent states that at the time of his license renewal in 2007 and 2009, he and his counsel were under the impression the offense was a Class "C" misdemeanor and was a minor traffic violation that did not require disclosure to the Texas Board of Nursing.

8. At the time of the initial incident in Finding of Fact Number Nine (9), Respondent was on active military duty as a Critical Care Nurse in the United States Air Force, 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, and had been in this position for two (2) years.

9. On or about August 5, 2008, while on active military duty as a Critical Care Nurse in the United States Air Force, 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, Respondent failed to document in the medical record Fentanyl 50 mcg that he administered to Patient OD. When Respondent informed the Nurse Fellow, who he was training, that he had not documented the dose, the Nurse Fellow documented in error that she had administered the dose. Respondent's conduct failed to create accountability for controlled substances.

10. On or about August 5, 2008, while on active military duty as a Critical Care Nurse in the United States Air Force, 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, Respondent failed to ensure wastage of the Fentanyl in excess of that which had been administered to the aforementioned Patient OD was documented, as required. Respondent's conduct resulted in an incomplete medical record.

11. On or about August 5, 2008, while on active military duty as a Critical Care Nurse in the United States Air Force, 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, Respondent failed to correctly document in the medical record a verbal order, which he received from a physician, to administer "Ativan 2-4 mg IV every 10 minutes as needed for air hunger" to Patient DG. Instead, Respondent added the order to those that had already been written by the physician. Respondent's conduct resulted in an inaccurate medical record.

12. On or about August 5, 2008, and August 6, 2008, while on active military duty as a Critical Care Nurse in the United States Air Force, 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, Respondent failed to accurately document:
    - Administration and wastage of Lorazepam and Morphine for the aforementioned Patient DG; and
    - A late entry nursing note in the medical record. Consequently, the late entry contradicted information documented the previous day on the Medication Administration Record, including the times and amounts of Morphine and Lorezapam that had been administered.

    Respondent's conduct resulted in an inaccurate medical record.

13. Formal Charges were filed on May 29, 2009.

14. Formal Charges were mailed to Respondent on June 1, 2009.

15. First Amended Formal Charges were filed on October 22, 2009.

16. First Amended Formal Charges were mailed to Respondent on October 22, 2009.

17. Second Amended Formal Charges were filed on June 18, 2010.

18. Second Amended Formal Charges were mailed to Respondent on June 18, 2010.

19. On or about June 24, 2010, Respondent completed an intensive re-orientation and skills verification which included safe administration of medications at the 59th Surgical Inpatient Squadron, Wilford Hall Medical Center, Lackland Air Force Base, Texas, which included a clinical practicum with supervised administration of medications, a Board approved class of which would have been a requirement of this Order.

20. On or about January 19, 2011, Respondent successfully completed a Board approved class in Critical Thinking Skills, which would have been a requirement of this Order.

21. In response to the incidents in Findings of Fact Number Nine (9), Respondent states that on the day in question, a total of 5 patients expired in the ICU, including patient O.D. and the environment was chaotic. The nurse intern responsible for the patient did not have access to the Pyxis to document waste of excess medications and the shift leader was unavailable due to other patient emergencies in the Unit. All of the excess medication (400 mcg) was wasted in the presence of the nurse intern on both occasions.

22. In response to Finding of Fact Number Ten (10), Respondent states that on the day in question, he removed Fentanyl for Patient O.D. in anticipation of the necessity of repeated doses or a drip, as hourly doses and/or a drip were ordered by the physician at 0620 with Withdrawal of Care Orders.

23. In response to Finding of Fact Number Eleven (11), Respondent states that on the day in question, at the time the patient D.G. was to be extubated, verbal orders were given by the attending physician at the bedside for administration of "liberal Morphine and Ativan". Prior to the extubation, Respondent was aware that the patient was not on any narcotics and asked the attending to clarify the Orders for liberal dosing in accordance with the accepted practice at the time to "titrate medications to effect". The Orders were confirmed and Respondent administered the medications based on patient response.

24. In response to Finding of Fact Number Twelve (12), Respondent states that on the day in question, after the patient D.G. expired, he documented the total amounts given to the patient and made the oncoming shift aware of both the method and amount(s) of medications administered. The oncoming shift leader proceeded to retrieve the Morphine drip for the patient that was ready in the pharmacy at the time of shift report. Respondent states that the day following the event, when he was made aware of concerns about how the Morphine and Ativan were documented in the Medication Administration Record, he made a late entry in patient D.G.'s chart based on the Pyxis records and his memory of medication administration.

25. Respondent submits the following achievements and certifications:

* Air Force Achievement Medal	8/13/07-12/19/07
* IRAQ War Veteran	2007
* Critical Care Air Transport Team	May-2007-Dec. 2010
*Military Training Network Challenge Coin	March 8, 2010
*Inpatient Operations Group Nursing Services CGO of the Quarter	March 2010
* CEN	Current thru 7/30/2011
* CCRN	Current thru 2/28/2013
* BLS Instructor	Current thru 1/2012
* PALS Instructor	Current thru 8/ 2012
* ACLS Instructor	Current thru 1/2012
* State of Texas Paramedic	July 1997-May 2011
* TNCC	Current thru 3/2014
* ENPC	Current thru 5/2014
* NRP	Current thru 5/2012
* AACN	Current thru 12/2011

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 Section 301.452(b)(10)&(13) Texas Occupations Code, and 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(D)&(1)(U) and 217.12(1)(A),(1)(C),(1)(F),(6)(I)&(10)(B).

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 666254, heretofore issued to MICHAEL VINCENT FONTANA, including revocation of Respondent's license to practice professional nursing in the State of Texas.

5. Pursuant to Section 301.463, Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, for purposes of criminal or civil litigation.

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 is 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*.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in nursing documentation. 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. The course shall be a minimum of six (6) hours in length of classroom time. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on

the following: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. RESPONDENT SHALL cause the instructor to submit a Verification of Course Completion form, provided by the Board, to the Board's office 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*.

(3) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars ($500.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

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:

(4) 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.

(5) 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.

(6) 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.

(7) 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.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT's license 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 settle this matter in accordance with Section 301.463(d), Texas Occupations Code. 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 to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 31 day of January, 2011.

MICHAEL VINCENT FONTANA, Respondent

Sworn to and subscribed before me this _____ day of _____, 20____.

SEAL

_____

Notary Public in and for the State of _____

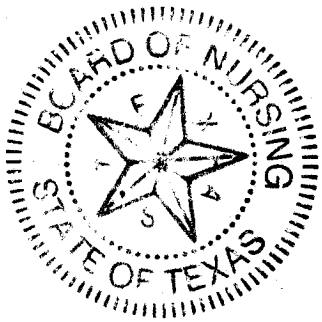
~~Approved as to form.~~

_____

Elizabeth L. Higginbotham, RN, JD
Attorney for Respondent

Signed this 31st day of January, 2011.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 31st day of January, 2011, by MICHAEL VINCENT FONTANA, Registered Nurse License Number 666254, and said Order is final.

Effective this 8th day of March, 2011.

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