BEFORE THE TEXAS BOARD OF NURSING

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| In the Matter of Registered | § | |
| License Number 581645 | § | AGREED |
| issued to DWAYNE ELLIS BROWN | § | 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 Bo considered the matter of DWAYNE ELLIS BROWN, Registered License Number 581( hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(12), Texas Occupations Code (eff. date 9/1999), Section 301.452(b)(2)&(10), Texas Occupations Code (eff. date 9/2003), Section 301.452(b)(2)(10)&(12), Texas Occupations Code (eff. date 9/2005), Section 301.452(b)(2)&(10), Texas Occupations Code (eff. date 9/2007) and Section 301.452(b)(12), Texas Occupations Code (eff. date 9/2009). Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on September 13, 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 Houston Community College, Houston, Texas, on May 15, 1992. Respondent was licensed to practice professional nursing in the State of Texas on August 31, 1992.

5. Respondent's nursing employment history includes:

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| 06/1992 to Present | Clinical Nurse<br>Anderson Cancer Center<br>Houston, Texas |

6. At the time of the incidents detailed in Finding of Fact Number Seven (7), Respondent was employed as a Clinical Nurse in the PACU/PTU with Anderson Cancer Center, Houston, Texas, and had been in this position approximately eight (8) years and eight (8) months.

7. On or about February 13, 2001, Respondent lacked fitness to practice professional nursing in that he was self-admitted to the West Oaks Hospital, Houston, Texas, for the treatment of alcohol and cocaine addiction, as well as the use of marijuana and Ativan. Respondent's conduct could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

8. On or about November 20, 2003, Respondent submitted a Texas Online Renewal Document to the Board of Nurse Examiners in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question: "In the past 5 years, have you been addicted or treated for the use of alcohol or any other drug?"

   Respondent failed to disclose that on or about February 13, 2001, he began a treatment program for the treatment of alcohol and cocaine addiction.

9. On or about November 28, 2005, Respondent submitted a Texas Online Renewal Document to the Board of Nurse Examiners in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question: "In the past 5 years, have you been addicted or treated for the use of alcohol or any other drug?"

   Respondent failed to disclose that on or about February 13, 2001, he began a treatment program at West Oaks Hospital, Houston, Texas, for the treatment of alcohol and cocaine addiction.

10. On or about November 15, 2006, Respondent lacked fitness to practice professional nursing in that he was self-admitted to the Memorial Hermann Hospital, Houston, Texas, for treatment of substance abuse. On December 7, 2006, Respondent was discharged from the residential unit and was transferred to the therapeutic community. On December

22, 2006, Respondent was transferred to day patient level of care and entered the Oxford House to continue with day patient treatment. Respondent's conduct could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

11. On or about November 4, 2007, Respondent submitted an Online Renewal Document to the Texas Board of Nursing in which he provided false, deceptive, and/or misleading information, in that he answered "No" to the question: "In the past 5 years, have you been addicted or treated for the use of alcohol or any other drug?"

    Respondent failed to disclose that on or about November 15, 2006, he began a treatment program at Memorial Hermann Hospital, Houston, Texas, for the treatment of alcohol and cocaine addiction.

12. On or about November 6, 2009, Respondent submitted a License Renewal Form to the Texas Board of Nursing in which he answered "Yes" to the question: "In the past 5 years, have you been addicted or treated for the use of alcohol or any other drug?"

    Respondent disclosed his treatment for substance abuse in 2001, and in 2006.

    In a letter dated October 20, 2009, Dr. Bernard Gerber, M.D., of Hauser Clinic & Associates, Bellaire, Texas, states that Respondent is under his care. Dr. Gerber is treating Respondent for Anxiety Disorder, not otherwise specified. He states Respondent has also been treated for substance dependence and has remained sober since treatment in a rehabilitation program in November 2006, followed by many months of outpatient treatment.

    Dr. Gerber initially evaluated Respondent in November 2006. At that time he recommended the substance dependence rehabilitation program that Respondent entered the very next day. Following that first evaluation appointment, Dr. Gerber had no further contact with Respondent until June 29, 2009, when he returned for re-evaluation. At that time he was experiencing increased anxiety. Respondent's medications are Amitriptyline 75mg daily and Zoloft 100mg daily. Dr. Gerber states Respondent is functioning well at home and at work and he is fully compliant with treatment.

13. In response to Findings of Fact Numbers Seven (7) through Twelve (12), Respondent states that he has been practicing at MD Anderson Cancer Center for the past 17 years. He is currently working in the PACU. He is now disclosing that he has been dishonest and has falsely entered information on several of his renewal applications regarding the question, "Have you been treated for chemical dependency or major depression since your last renewal?" Respondent states that he was not involved in TPAPN and knowingly answered, "No" to the above question. The years he is speaking of are 1993, 1999, 2001

and 2007. Respondent also disclosed that he was arrested, charged and given deferred adjudication for Public Lewdness in 1998. His employer was aware of the above and very supportive each time.

Respondent states he is coming forward and being honest because he cannot go on living in fear and dishonesty to himself and the Nursing profession he loves. Prior to his most recent treatment, he had been treated four times for chemical dependency and depression since 1992.

In October of 2006, the PACU was short of nurses on the night shift. His boss, Marian Thomas, asked for a volunteer to work nights for a month and he volunteered. The last day of his night shift, he took his break, fell asleep, and returned to the unit one hours late. Another RN had to hang an antibiotic that was due on his patient and reported this information to his boss. Ms. Thomas made a formal referral to their EAP department because she knew something was wrong with him. Ms. Thomas thought Respondent was depressed. The EAP Counselor, knowing Respondent's history with depression and chemical dependency, referred him to a psychiatrist, Dr. Gerber, of the Hauser Clinic.

On his initial visit with Dr. Gerber, Respondent was immediately diagnosed with relapse of alcohol and chemical dependency. Dr. Gerber said Respondent was impaired and needed treatment immediately. Dr. Gerber said that following treatment they would work on depression. That was November 14, 2006. Respondent entered the Hermann Memorial Prevention and Recovery Center (The PARC) the following night. Respondent states his sobriety date is November 16, 2006. After treatment, he and his employer set up an agreement to:

1. Attend a minimum of four 12-step meetings a week,
2. Relapse Prevention for one year with a counselor who reported back to MDACC on his progress, and
3. Random drug/alcohol testing for one year post treatment.

Respondent states that he now lives a life of peace, joy, hope, faith, courage and honesty with the help of God and the twelve step program of AA. He attends meetings on a regular basis, chairs meetings the 2nd Friday of each month at his home group, works the 12 steps with his sponsor, and is of service to others who suffer from this disease of addiction. He states that writing this letter and coming forward has been healing for him. No matter what happens, he states he will not drink nor use drugs today and continue to live his life one day at a time.

14. 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 Section 301.452(b)(12), Texas Occupations Code (eff. date 9/1999), Section 301.452(b)(2)&(10), Texas Occupations Code (eff. date 9/2003), Section 301.452(b)(2)(10)&(12), Texas Occupations Code (eff. date 9/2005), Section 301.452(b)(2)&(10), Texas Occupations Code (eff. date 9/2007) and Section 301.452(b)(12), Texas Occupations Code (eff. date 9/2009), and 22 TEX. ADMIN. CODE §217.12(22), (eff. date 9/1/1999), and 22 TEX. ADMIN. CODE §217.12(5)&(6)(I), (eff. date 9/28/2004).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered License Number 581645, heretofore issued to DWAYNE ELLIS BROWN, 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 Registered Nurse License Number 581645, previously issued to DWAYNE ELLIS BROWN, to practice professional nursing in Texas is hereby SUSPENDED for a period of two (2) years with the suspension STAYED and Respondent is hereby placed on PROBATION for two (2) years with the following agreed terms of probation:

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 the 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.

(1) 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.

(2) RESPONDENT SHALL pay a monetary fine in the amount of seven hundred fifty dollars ($750). 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.

(3) 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) contact 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 PROBATION CONDITIONS FOR TWO (2) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY 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 PROBATIONARY PERIOD:**

(4) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions 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 probation conditions 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 be supervised by a Registered Nurse who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, 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 Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

(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 two (2) years of employment as a nurse.

(8) 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.**

(9) 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 probation 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:

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| 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 probation 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 probation period.

(10) 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.

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.

IT IS FURTHER AGREED and ORDERED that if during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

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 29 day of October, 20 10.

DWAYNE ELLIS BROWN, Respondent

Sworn to and subscribed before me this 29th day of October, 20 10.

SEAL

H. T. LEE
My Commission Expires
August 28, 2011

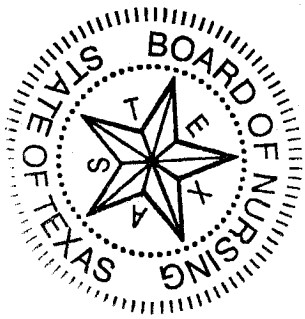
Notary Public in and for the State of Texas

Approved as to form and substance.

Andrea Arceneaux, Attorney for Respondent

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 29th day of October, 2010, by DWAYNE ELLIS BROWN, Registered Nurse License Number 581645, and said Order is final.

Effective this 14th day of December, 2010.




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