BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Vocational Nurse	§	AGREED
License Number 158562	§	
issued to MARTHA PATRICIA MARTINEZ	§	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 B considered the matter of MARTHA PATRICIA MARTINEZ, Vocational Nurse License Number 158562, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9),(10)&(12), Texas Occupations Code. Respondent waived representation by counsel, 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 representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.

3. Respondent is currently licensed to practice vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Galen Health Institute, San Antonio, Texas, on August 2, 1996. Respondent was licensed to practice vocational nursing in the State of Texas on September 3, 1996.

5. Respondent's complete vocational nursing employment history includes:

03/1996-09/1997	Unknown

Respondent's complete vocational nursing employment history includes (continued):

09/1997-10/1998	LVN	Monument Hill La Grange, Texas
10/1998-01/1999	LVN	Regency Nursing Home Schulenburg, Texas
01/1999-03/1999	LVN	Manor Care Nursing and Rehab San Antonio, Texas
03/1999-03/01	LVN	St. Francis Nursing Home San Antonio, Texas
04/01-11/01	Unknown	
12/01-03/02	LVN	Faith Family Victoria, Texas
03/02-11/08	LVN	Devereux Foundation Treatment Center Victoria, Texas
12/08-Present	Unknown	

6. At the time of the initial incident in Finding of Fact Number Seven (7), Respondent was employed as a Licensed Vocational Nurse with Devereux Foundation Treatment Center, Victoria, Texas, and has been in this position for approximately six (6) years and eight (8) months.

7. On or about November 2008, while employed as a Licensed Vocational Nurse with Devereux Foundation Treatment Center, Victoria, Texas, Respondent lacked fitness to practice nursing in that she admitted to and sought treatment for cocaine use. Additionally, Respondent self reported to Texas Peer Assistance Program for Nurses and was unable to maintain compliance due to not calling in, missing drug screens when selected, lack of advocate contact and gross noncompliance with paperwork. Respondent's condition could have affected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her 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 24, 2008, Respondent lacked fitness to practice nursing in that she was treated for chemical dependency to alcohol and numerous prescribed drugs and suicidal ideations. Respondent was in detox for five (5) days and residential treatment for five (5)

days. Respondent's condition could have affected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

9. On or about September 2009, Respondent lacked fitness to practice nursing in that she was institutionalized for thirty-three (33) days at the San Antonio State Hospital, where she was eventually diagnosed with Bi-polar Disorder/Manic and Borderline Personality Disorder. Additionally, Respondent's current medications include Abilify, Lexapro, Buspar, Xanax, Ambien, Trazodone, and Darvocet N. Respondent's condition could have affected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

10. In Response to Findings of Fact Numbers Seven (7) through Nine (9), Respondent states her Director of Nursing and Human Resources were following up on a complaint when they requested a mouth swipe. Respondent states she reminded them she was on ten (10) different pain medications, three (3) of which were narcotics. Respondent also stated she had consumed a small amount of cocaine the week prior and told them she needed help for her problem with alcohol and cocaine even though she would only binge every six (6) weeks. Additionally, Respondent states when she was fired, she was scared, never has lost a job before, and made a poor choice to take her own life. Respondent arrived at The Right Step Detox Center in Houston, Texas, and had a three (3) day detox and a two (2) day residential stay, where she was introduced to Alcoholics Anonymous (AA) and Cocaine Anonymous (CA). Respondent states that when she left the Right Step, she did not feel she received the help she needed, so she got admitted into San Antonio State Hospital, where she stayed for thirty-three (33) days, and received the psychiatric help that she needed. Respondent was diagnosed with Bipolar Depressive/Manic Disorder, Borderline Personality Disorder, Obsessive Compulsive Disorder, and Depression. She was then released to a halfway house in Cuero, Texas, where she stayed for twenty-nine (29) days continuing with AA meetings. Respondent states in February 2009 she was recovering from the birth of her son when she was diagnosed with bulging discs on her C3,C4, C5 and L3,L4, and L5. She was prescribed morphine, but continued to have pain in her lower back. Respondent states her physician did a discography showing ruptured discs and this is when her physician added Dilaudid to her medication regimen. Respondent again had to get detoxed and was placed at Charlie's Place, Corpus Christi, Texas, where she was for nine (9) days. Respondent has since been working with the Department of Assistive and Rehabilitative Services (DARS) and a new pain management specialist who has placed her on Darvocet N. Additionally, Respondent states she is seeing a new psychiatrist who has prescribed her Lexapro, Batined, Abilify, Alprazolam, Trazadone, and Ambien.

11. 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 and mental health issues.

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 a violations of Section 301.452(b)(9),(10)&(12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(A),(4),(5),(10)(A)&(11)(B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 158562, heretofore issued to MARTHA PATRICIA MARTINEZ, 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 Vocational Nurse License Number 158562, previously issued to MARTHA PATRICIA MARTINEZ, to practice nursing in Texas is hereby SUSPENDED and said suspension is ENFORCED until Respondent completes a treatment program approved by the Board, provides documentation of successful completion, and has obtained twelve (12) consecutive months of sobriety. Any relapse prior to the completion of the twelve (12) consecutive months of sobriety will result in an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

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.

IT IS FURTHER AGREED, upon verification of successful completion of the approved treatment and twelve (12) consecutive months of sobriety as set out in this Order, the Suspension will be STAYED, and RESPONDENT will be placed on PROBATION for three (3) years with the following agreed terms of probation:

(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 all re-registration fees, if applicable, and RESPONDENT'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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 <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. 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.*

(4) RESPONDENT SHALL, within one (1) year of entry of this Order, 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, RESPONDENT 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 this workshop may be found at the following web address: *http://www.learningext.com/products/generalce/critical/ctabout.asp*.

(5) RESPONDENT SHALL pay a monetary fine in the amount of three-hundred and fifty ($350) dollars. 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 PROBATION CONDITIONS FOR THREE (3) YEARS OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(6) 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.

(7) 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.

(8) For the first year of employment as a nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse or by a Licensed Vocational Nurse. Direct supervision requires another nurse to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). The 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.

(9) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse or by a Licensed Vocational 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.

(10) RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a nurse.

(11) RESPONDENT SHALL NOT practice as a nurse in any critical care area for one (1) year of employment as a nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(12) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a nurse.

(13) 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 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) months for three (3) years of employment as a nurse.

(14) 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.**

(15) 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:

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.

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.

(16) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT'S progress in

therapy, rehabilitation and capability to safely practice professional nursing. The report must indicate whether or not the RESPONDENT'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 for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT is dismissed from therapy.

(17) 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) months. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

(18) RESPONDENT SHALL participate in pain management therapy with a Board approved Medical Doctor or Doctor of Osteopathy, licensed by the Texas Medical Board, and certified as a Diplomat with the American Board of Pain Medicine. RESPONDENT SHALL CAUSE the physician to submit written reports to the Board, which shall include, at a minimum, the clinical indications and rationale for the chronic use of controlled substances, RESPONDENT'S progress and compliance with pain management therapy, and a prognosis as to RESPONDENT'S ability to safely practice nursing in a direct patient care setting. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months,

the reports shall then be required at the end of each three (3) month period for the duration of the probation period, or until RESPONDENT no longer requires the use of controlled substances.

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, 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.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I waive representation by counsel. 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 4 day of Oct, 2010.

Martha Patricia Martinez

MARTHA PATRICIA MARTINEZ, Respondent

Sworn to and subscribed before me this 4 day of Oct, 2010.

SEAL

Casey Lane Housworth

Notary Public in and for the State of Tx

CASEY LANE HOUSWORTH
Notary Public, State of Texas
My Commission Expires
February 19, 2012

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 4th day of October, 2010, by MARTHA PATRICIA MARTINEZ, Vocational Nurse License Number 158562, and said Order is final.

Effective this 9th day of November, 2010.

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