IN THE MATTER OF	§	BEFORE THE ELIGIBILITY
	§	
PERMANENT CERTIFICATE	§	AND DISCIPLINARY
	§	
NUMBER 715250	§	COMMITTEE
	§	
ISSUED TO	§	OF THE TEXAS
	§	
THOMAS WILLIAM MERRIGAN	§	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

ORDER OF THE BOARD

TO: Thomas William Merrigan
7308 Meadowood Drive
Austin, Texas 78723

During open meeting held in Austin, Texas, on November 9, 2010, the Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee of the Texas Board of Nursing finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, chapter 301 of the Texas Occupations Code, for retention of Respondent's license to practice professional nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Eligibility and Disciplinary Committee, after review and due consideration, adopts the

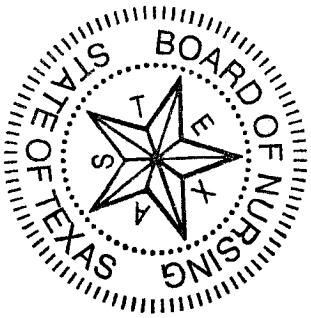
proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Certificate Number 715250, previously issued to THOMAS WILLIAM MERRIGAN, to practice professional nursing in the State of Texas be, and the same is hereby, REVOKED.

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

Entered this 9th day of November, 2010.



TEXAS BOARD OF NURSING

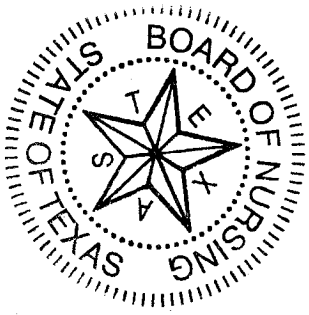
BY: _____

KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2010, a true and correct copy of the foregoing DEFAULT ORDER was served by placement in the U.S. Mail via certified mail, and addressed to the following person(s):

Thomas William Merrigan
7308 Meadowood Drive
Austin, Texas 78723



BY: _____
KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of Permanent License	§	**BEFORE THE TEXAS**
Number 715250, Issued to	§	
THOMAS WILLIAM MERRIGAN, Respondent	§	**BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, THOMAS WILLIAM MERRIGAN, is a Registered Nurse holding license number 715250, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about April 8, 2009, while holding a license as a Registered Nurse in the State of Texas, Respondent was issued a Final Order by the Minnesota Board of Nursing wherein Respondent's Minnesota Registered Nursing License No.142903-3 was Indefinitely Suspended. A copy of the State Of Minnesota Board of Nursing Final Order, Findings of Fact and Conclusions and dated April 8, 2009 is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(8), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to revocation of Respondent's license to practice nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to Section 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the Board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, Board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Orders which are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: State Of Minnesota Board of Nursing Findings of Fact, Conclusions and Final Order dated April 8, 2009. Agreed Order, Texas Board of Nursing dated August 18, 2009; and Eligibility Agreed Order, Texas Board of Nurse Examiners dated May 3, 2005.

Filed this 27th day of April, 2010.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Renee Koslan Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: State Of Minnesota Board of Nursing Findings of Fact, Conclusions and Final Order dated April 8, 2009;
Agreed Order, Texas Board of Nursing dated August 18, 2009; and
Eligibility Agreed Order, Texas Board of Nurse Examiners dated may 3, 2005.

0999/D

BEFORE THE MINNESOTA

BOARD OF NURSING

In the Matter of Thomas W. Merrigan, R.N. License No. 142903-3	FINDINGS OF FACT, CONCLUSIONS, AND FINAL ORDER

The above-entitled matter came on for a prehearing conference on January 14, 2009, before Administrative Law Judge ("ALJ") Barbara L. Neilson at the request of the Minnesota Board of Nursing ("Board") Review Panel. The matter was initiated pursuant to the Notice and Order for Prehearing Conference and Hearing ("Notice of Hearing") issued by the Board Review Panel on November 26, 2008. Daphne A. Lundstrom, Assistant Attorney General, represented the Board Review Panel. Thomas W. Merrigan, R.N. ("Respondent"), made no appearance.

On February 10, 2009, the ALJ issued Findings of Fact, Conclusions, and Recommendation ("ALJ's report"), recommending the Board take disciplinary action against the nursing license of Respondent. (A true and accurate copy of the ALJ's report is attached hereto and incorporated herein as Exhibit A.)

The Board convened to consider the matter on April 2, 2009, in Conference Room A on the fourth floor of University Park Plaza, 2829 University Avenue S.E., Minneapolis, Minnesota. Steve Masten Assistant Attorney General, appeared and waived oral argument on behalf of the Board Review Panel. Respondent did not appear. Board member Kimberly Keilholtz did not participate in deliberations and did not vote in the matter. Barbara Damchik-Dykes, Discipline Coordinator for the Board, and Kimberly S. Miller, Nursing Practice Specialist for the Board, did not participate in the deliberations. Angelina M. Barnes, Assistant Attorney General, was present as legal advisor to the Board.

FINDINGS OF FACT

The Board has reviewed the record of this proceeding and hereby accepts the February 10, 2009, ALJ's report and accordingly adopts and incorporates by reference the Findings of Fact therein. Paragraph 7 of the ALJ's Findings of Fact states, "Pursuant to Minn. R. 1400.6000, the allegations set forth in the Notice and Order for Prehearing Conference and Hearing are deemed proved without further evidence, and they are hereby incorporated into these Findings by reference."

The allegations contained in the Notice of Hearing are as follows:

1. Respondent is licensed as a registered nurse ("RN") in the State of Minnesota.

2. From March to December 1999, Respondent was employed as an RN at a medical facility in Rochester, Minnesota. During his employment, Respondent was counseled for creating a hostile care and work environment. Respondent was allowed to resign his employment in lieu of termination.

3. Beginning on January 17, 2000, Respondent was employed as an RN at a medical facility in Minneapolis, Minnesota. Respondent failed to meet acceptable standards of nursing practice as follows:

a. In February 2001, Respondent failed to notify a physician when a patient's condition changed significantly after a blood loss totaling 1200 cc.

b. On April 12, 2001, Respondent used excessive force on two occasions while caring for a patient.

c. On June 24, 2001, Respondent ordered multiple laboratory tests for a patient against physician's orders.

d. On June 27, 2001, Respondent was assigned to provide one-to-one care for a patient. Respondent failed to infuse the correct maintenance intravenous ("IV") solution, infused heparin at an incorrect rate, did not accurately document his actions, and incorrectly set the patient's feeding pump.

e. On September 14, 2001, Respondent failed to follow orders for a ventilator setting and falsified his documentation to conceal the error.

4. Beginning on November 19, 2001, Respondent was employed as an RN at a medical facility in Robbinsdale, Minnesota. Respondent failed to meet acceptable standards of nursing practice as follows:

a. On June 30, 2003, Respondent failed to follow the directive of a health unit coordinator.

b. On August 8, 2003, Respondent improperly documented in a patient's records that he had deflated the balloon on the patient's rectal tube as ordered, even though no balloon was found on the tube.

c. On September 4, 2003, Respondent provided substandard care to an adolescent trauma patient when he: (1) failed to secure the patient's intracranial pressure catheter; (2) improperly disconnected the patient's Neo-Synephrine IV infusion; (3) failed to monitor the patient's blood pressure; (4) improperly discontinued the patient's dopamine infusion; and (5) failed to cap the port of a disconnected central venous pressure line stopcock.

d. On September 2, 2004, Respondent failed to properly complete documentation on a patient's medication administration record.

e. On September 3, 2004, Respondent made a comment to a patient that was sexual or seductive in nature.

f. Respondent made a comment to a coworker that referred to oral sex.

g. Respondent engaged in unprofessional conduct by discussing his personal health issues with patients' families.

h. Respondent failed to comply with testing requirements.

i. During October and November 2004, staff documented numerous discrepancies in Respondent's administration and documentation of controlled substances.

j. On November 21, 2004, Respondent engaged in unprofessional conduct in his communications with a patient admitted for a self-inflicted gunshot wound.

k. In regard to that patient, Respondent also violated the Health Insurance Portability and Accountability Act ("HIPAA") when he discussed the patient's situation with an unnecessary party in a tone loud enough for unnecessary third parties to hear.

l. Respondent engaged in unprofessional conduct when he made a disparaging comment to a patient's family regarding female staff at the facility.

m. On February 21, 2006, the Board served Respondent with a Notice of Conference With Board of Nursing Review Panel, scheduling a conference on March 13, 2006, to discuss the above allegations. Respondent failed to attend the conference or notify the Board he was unable to attend.

5. On December 19, 2007, the Board was notified that the Texas Board of Nurse Examiners issued an Eligibility Agreed Order, dated May 3, 2005, to Respondent based on his failure to disclose a Montana conviction for Solicitation of Prostitution.

CONCLUSIONS

The Board accepts the February 10, 2009, ALJ's report and accordingly adopts and incorporates the Conclusions therein.

ORDER

Based on the foregoing Findings of Fact and Conclusions and upon the recommendation of the ALJ, the Board issues the following Order:

1. NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Respondent as a registered nurse in the State of Minnesota is **SUSPENDED** immediately for an indefinite period of time.

2. IT IS FURTHER ORDERED that during the period of suspension Respondent shall not engage in any conduct which constitutes the practice of professional nursing as defined in Minnesota Statutes section 148.171, subdivision 15 (2008), and shall not imply to any persons by words or conduct that Respondent is authorized to practice nursing in the State of Minnesota.

3. IT IS FURTHER ORDERED that Respondent surrender to the Board his nursing registration certificate. Respondent shall personally deliver or mail the certificate to the Minnesota Board of Nursing, c/o Shirley A. Brekken, Executive Director, 2829 University Avenue S.E., Suite 200, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

4. IT IS FURTHER ORDERED that Respondent may petition the Board to have the suspended status removed from his license at such time as he is willing to respond to the Findings of Fact set forth above and following 12 months from the date of this Order. His license may be reinstated, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof shall be upon Respondent to demonstrate by a preponderance of the evidence that he is capable of conducting himself in a fit and competent manner in the practice of professional nursing. At the time of Respondent's petition, Respondent must meet with a Board Review Panel to review his response to the Findings of Fact. In petitioning for removal of the

suspension, Respondent shall comply with or provide the Board with, at a minimum, the following:

a. A response to each separate fact set forth in the Findings of Fact.

b. Evidence of compliance with the provisions of this Order. As part of the proof of compliance, Respondent shall submit the following in support of his petition:

1) One-on-One Consultation and Instruction. Within six months of petitioning for reinstatement, Respondent shall complete one-on-one consultation and instruction with a clinical nurse specialist. The consultation and instruction shall last six hours or until such time as the evaluator determines is sufficient to achieve the learning objectives, whichever is greater. The clinical nurse specialist must be approved by Board staff, for purposes of this Order, before the consultation begins. In order for the Board to consider approving a consultant, Respondent shall submit or cause to be submitted the resume or curriculum vitae of the proposed consultant and proposed course outline. Respondent is responsible for arranging and paying for the instruction. The instruction shall address: (1) boundaries, (2) unprofessional conduct, (3) scope of practice, (4) professional interactions with staff and patients, and (5) communication of patient condition. The nurse consultant shall submit a report directly to the Board, addressing the following:

a) Verification the nurse consultant has reviewed a copy of this Order;

b) An evaluation of Respondent's nursing practice and understanding of the subjects of the instruction prior to beginning the consultation;

c) A description of the content and method of instruction provided during the consultation;

d) A statement indicating what Respondent learned and achieved through the instruction and how the learning was evaluated;

e) Any recommendations for additional education directed at improving Respondent's nursing practice; and

f) Any other information the nurse consultant believes would assist the Board in its ultimate review of this matter.

2) Compliance With Consultant's Recommendations. Respondent shall promptly comply with any recommendations for additional education made by the nurse consultant. Respondent must submit written documentation, such as measurable learning objectives and qualifications of the instructor, in order to receive prior approval from Board staff of classes Respondent takes in fulfillment of this requirement. Each class must meet the continuing nursing education requirements found in Minnesota Rules 6310.2800, subpart 3 (2007). Respondent shall submit verification of participation for any class taken in fulfillment of this requirement.

3) Mental Health Evaluation. Within 60 days of the date of petitioning for reinstatement, Respondent must undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Respondent shall submit, or cause to be submitted, the credentials of the evaluator for review and preapproval by Board staff for purposes of this evaluation. The evaluation shall include the Minnesota Multiphasic Personality Inventory ("MMPI"). Respondent is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

a) Verification the evaluator has reviewed a copy of this Order;

b) Diagnosis and any recommended treatment plan;

c) An interpretation of Respondent's MMPI test;

d) A fitness-for-duty evaluation;

e) Respondent's ability to manage interpersonal conflict;

f) Respondent's ability to handle stress;

g) Recommendations for additional evaluation or treatment; and

h) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

4) Compliance With Evaluator's Recommendations. Respondent shall comply with any recommendations for additional evaluation and treatment made by the mental health evaluator.

5. IT IS FURTHER ORDERED that Respondent shall meet all reregistration requirements in effect at the time of his petition, including but not limited to completing the appropriate application, paying the requisite fees, and completing any necessary continuing education requirements.

6. IT IS FURTHER ORDERED that, pursuant to Minnesota Statutes section 148.262, subdivision 4 (2008), when Respondent petitions for reinstatement of his registered nurse license, he must pay to the Board the total costs of the proceedings which resulted in the suspension of his license, including the costs paid by the Board to the Office of Administrative Hearings. The total costs of the proceedings are $226.00 and shall be paid by cashier's check(s) or money order(s) made payable to the Minnesota Board of Nursing, c/o

Shirley A. Brekken, Executive Director, 2829 University Avenue S.E., Suite 200, Minneapolis, Minnesota 55414.

7. IT IS FURTHER ORDERED that Respondent's violation of this Order shall constitute the violation of a Board order for purposes of Minnesota Statutes section 148.261, subdivision 1(18) (2008), and provide grounds for further disciplinary action.

8. IT IS FURTHER ORDERED that the Board may, at any regularly scheduled meeting following Respondent's petition for reinstatement of his license and his meeting with a Board Review Panel, take any of the following actions:

a. Issue a nursing registration certificate to Respondent.

b. Issue a nursing registration certificate to Respondent with limitations placed upon the scope of Respondent's practice and/or conditional upon further reports to the Board.

c. Continue the suspension of Respondent's license upon his failure to meet the burden of proof.

Dated: April 8, 2009

STATE OF MINNESOTA

BOARD OF NURSING

SHIRLEY A. BREKKEN
Executive Director

AG: #2428984-v1

THIS DOCUMENT IS NOT PUBLIC 11-0904-20071-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF NURSING

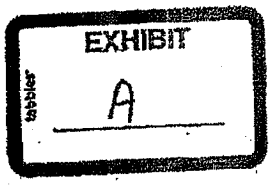
In the Matter of Thomas W. Merrigan, R.N. License No. 142903-3	**FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson commencing at 1:30 p.m. on January 14, 2009, at the Minnesota Board of Nursing, 2829 University Avenue SE, Suite 200, Minneapolis, MN 55414. Daphne A. Lundstrom, Assistant Attorney General, appeared on behalf of the Review Panel of the Minnesota Board of Nursing (the Board). There was no appearance by or on behalf of the Respondent, Thomas W. Merrigan, R.N. On January 26, 2009, the Board of Nursing filed a motion requesting that the Respondent be found in default. The OAH record with respect to the motion for default remained open until February 9, 2009, for receipt of a response from the Respondent.

STATEMENT OF THE ISSUE

The issue in this case is whether or not disciplinary action should be taken against the R.N. license of the Respondent under Minn. Stat. § 148.261, or whether costs or a civil penalty should be imposed against the Respondent under Minn. Stat. § 148.262. The Board's Review Panel alleges that the Respondent has engaged in unprofessional conduct, including failure to conform to minimal standards of acceptable and prevailing nursing practice, in violation of Minn. Stat. § 148.261, subd. 1(6); has an actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, or chemicals, or as a result of any mental or physical condition in violation of Minn. Stat. § 148.261, subd. 1(9); has engaged in unethical conduct, including conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient in violation of Minn. Stat. § 148.261, subd. 1(11); has revealed a privileged communication from or relating to a patient in violation of Minn. Stat. § 148.261, subd. 1(14); and has failed to cooperate with a Board investigation in violation of Minn. Stat. § 148.261, subd. 1(23), and 148.265.

Based upon the record in this matter, the Administrative Law Judge makes the following:



FINDINGS OF FACT

1. On November 26, 2008, the Notice and Order for Prehearing Conference and Hearing in this matter was mailed to the Respondent, Thomas W. Merrigan, R.N., at the two Texas addresses identified in the affidavit of service.[1]

2. The Notice of and Order for Prehearing Conference and Hearing contained the following notice:

> Respondent's failure to appear at the prehearing conference, settlement conference, or hearing may result in a finding that Respondent is in default, that the allegations contained in this Notice and Order for Prehearing Conference and Hearing may be accepted as true, and its proposed action may be upheld.[2]

3. The Notice and Order for Prehearing Conference and Hearing scheduled a prehearing conference for January 14, 2009, at 1:30 p.m.[3]

4. By letter dated December 12, 2008, the Administrative Law Judge sent a letter to Respondent at the two Texas locations. The letter reminded the Respondent of the prehearing conference scheduled for January 14, 2009, and offered to allow him to participate in the prehearing conference by telephone. The letter also included information about contested case proceedings and legal representation. One of the envelopes sent to the Respondent was returned by the postal service marked "moved – left no address – unable to forward." The other envelope was not returned. The Respondent did not respond to the December 12, 2008, letter in any way.

5. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or contact the Administrative Law Judge or counsel for the Board to request a continuance prior to the January 14, 2009, prehearing conference. The Respondent did not personally appear at the prehearing conference or have an appearance made on his behalf.[4] The Board filed a written motion for a default recommendation on January 26, 2009, and sent a copy of the motion to the Respondent.[5] The Respondent did not submit any response in opposition to the motion.

6. Because the Respondent failed to appear for the prehearing conference or make other arrangements with the Administrative Law Judge, he is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations set forth in the Notice and Order for Prehearing Conference and Hearing are deemed proved without further evidence, and they are hereby incorporated into these Findings by reference.

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[1] *See* Affidavit of Service by Mail attached to Notice and Order for Prehearing Conference and Hearing.
[2] Notice and Order for Prehearing Conference and Hearing at 4.
[3] *Id.* at 1.
[4] *See* Submission from Counsel for the Board dated January 22, 2009.
[5] *Id.*

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Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Board of Nursing and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 214.10, 214.103 and 14.50.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter.

3. The Minnesota Board of Nursing has complied with all relevant procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, when a party defaults, the allegations and the issues set out in the Notice and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore deems the allegations to be true.

6. Minn. Stat. § 148.261, subd. 1(6), specifies that the Board may discipline a licensee who has engaged in unprofessional conduct, including failure to conform to minimal standards of acceptable and prevailing nursing practice. Minn. Stat. § 148.261, subd. 1(9), provides that the Board may discipline a licensee who is actually or potentially unable to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, or chemicals, or as a result of any mental or physical condition. Minn. Stat. § 148.261, subd. 1(11), indicates that the Board may discipline a licensee who has engaged in unethical conduct, including conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient. Minn. Stat. § 148.261, subd. 1(14), states that the Board may discipline a licensee who has revealed a privileged communication from or relating to a patient. And Minn. Stat. §§ 148.261, subd. 1(23) and 148.265 specify that failing to cooperate with an investigation of the Board also constitutes grounds for disciplinary action.

7. The Board has grounds to take disciplinary action against the Respondent's license because he has engaged in unprofessional conduct and failed to conform to minimal standards of acceptable and prevailing nursing practice on numerous occasions, as set forth in the Notice and Order for Prehearing Conference and Hearing. In addition, as detailed in the Notice and Order for Prehearing Conference and Hearing, the Respondent has engaged in unethical conduct; has improperly revealed a privileged communication relating to a patient; has an actual or potential inability to practice nursing with reasonable skill and safety to patients; and failed to

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disclose a Montana conviction for solicitation of prostitution to the Texas Board of Nurse Examiners. Finally, the Respondent failed to attend a conference with the Review Panel in March 2006 or notify the Board of his inability to attend.

8. An order by the Board taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Minnesota Board of Nursing take disciplinary action against Thomas W. Merrigan, R.N.

Dated: February 10, 2009

Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default (no digital recording).

NOTICE

This Report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Executive Director of the Minnesota Board of Nursing, Suite 500, 2829 University Avenue, S.E., Minneapolis, Minnesota 55414 (telephone: 612-617-2296), to ascertain the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
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In the Matter of	§	ELIGIBILITY
THOMAS WILLIAM MERRIGAN	§	
APPLICANT for Eligibility for Licensure	§	AGREED ORDER

On the date entered below, the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the Temporary License/Endorsement Application and supporting documents filed by THOMAS WILLIAM MERRIGAN, hereinafter referred to as APPLICANT, together with any documents and information gathered by staff and APPLICANT's Certificate contained herein. Information received by the Board produced evidence that APPLICANT may have violated Section 301.452(b)(3), Texas Occupations Code.

APPLICANT waived representation by counsel, notice and hearing, and agreed to the entry of this Order offered on May 2, 2005, by Katherine A. Thomas, MN, RN, Executive Director.

FINDINGS OF FACT

1. On or about March 25, 2005, Applicant submitted a Temporary License/Endorsement Application as a professional nurse in the State of Texas in compliance with Section 301.260 *et seq.*, of the Texas Occupations Code.

2. Applicant waived representation by counsel, informal conference, notice and hearing, and consented to the entry of this Order.

3. Applicant received a Baccalaureate Degree in Nursing from Winona State University, Winona, Minnesota, in May 1991.

4. Applicant completed the application for licensure by endorsement and answered "yes" to Question Number Thirteen (13), which reads as follows: "*Have you been convicted, adjudged guilty by a court, pled guilty, no contest or nolo contendere to any crime in any state, territory or country, whether or not a sentence was imposed, including any pending criminal charges or unresolved arrest?.*"

5. Applicant disclosed the following criminal history, to wit:

   In November 1983, Applicant was convicted of the misdemeanor offense of Trespassing in Walled Lake, Michigan.

6. Applicant failed to disclose the following criminal history, to wit:

   On or about October 16, 1996, Applicant was charged with the misdemeanor offense of Solicitation of Prostitution in Billings, Montana, and sentenced to thirty (30) days house arrest and assessed a fine in the amount of four hundred fifteen dollars ($415.00).

7. In a written statement to the Board, Applicant states that he failed to disclose this offense on his application for licensure by endorsement due to advise from his attorney, embarrassment, and his misunderstanding of Texas law pertaining to his licensure by endorsement.

8. Applicant has sworn that with the exception of matters disclosed in connection with the Temporary License/Endorsement Application his past behavior conforms to the Board's professional character requirements.

9. Applicant presented no evidence of behavior since his aforementioned criminal conduct which is inconsistent with good professional character.

10. On May 2, 2005, the Executive Director considered the evidence of the conviction and evaluated its direct relationship to nursing according to Chapter 53, Section 53.001 *et seq.*, Texas Occupations Code, and 22 Texas Administrative Code §213.28, including the nature and circumstance of the offenses, and the absence of any subsequent conviction.

11. On May 2, 2005, the Executive Director considered evidence of Applicant's post conviction behavior in light of the character factors set out in 22 Texas Administrative Code §213.27 and determined that Applicant currently demonstrates the criteria required for good professional character.

12. Licensure of Applicant poses no direct threat to the health and safety of patients or the public.

13. The Executive Director's review of the grounds for potential ineligibility has been made on the basis of Applicant's disclosures.

14. Applicant has been advised by the Board that any information found to be incomplete, incorrect or misleading to the Board or a subsequent discovery of a basis of ineligibility will be considered by the Board and may result in an ultimate determination of ineligibility or the later revocation of a license obtained through fraud or deceit.

CONCLUSIONS OF LAW

1. The Board of Nurse Examiners (Board) has jurisdiction over this matter pursuant to Section 301.453 *et seq.*, Texas Occupations Code.

2. Applicant has submitted an application in compliance with Section 301.260, Texas Occupations Code.

3. The evidence in Findings of Fact Numbers Five (5), Six (6), and Seven (7) is sufficient cause to take disciplinary action under Section 301.452 *et seq.*, Texas Occupations Code, and, therefore, sufficient cause to deny licensure.

4. The Board may probate the denial of a license under conditions for a specified term pursuant to Section 301.453, Texas Occupations Code.

5. This Order is conditioned upon the accuracy and completeness of Applicant's disclosures. Any subsequently discovered discrepancies will result in investigation and disciplinary action.

6. The Board may license individuals who have been previously convicted of a crime or received a deferred order upon consideration of the factors set out in 22 Texas Administrative Code §§213.27 and 213.28 and evaluating the direct relationship to nursing according to Chapter 53, Sec. 53.001 *et seq.*, Texas Occupations Code.

7. Applicant shall immediately notify the Board of any fact or event that could constitute a ground of ineligibility for licensure under Section 301.452 *et seq.*, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED that the application of THOMAS WILLIAM MERRIGAN, APPLICANT, is hereby conditionally GRANTED and shall be subject to the following conditions:

(1) APPLICANT SHALL obtain and read the Texas Nursing Practice Act, and the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice.

(2) Upon payment of the necessary fees, APPLICANT SHALL be issued a license to practice professional nursing in the State of Texas, which shall bear the appropriate notation.

(3) APPLICANT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(4) IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to APPLICANT's multistate licensure privilege, if any, to practice professional nursing in the State of Texas.

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

(6) APPLICANT SHALL, within one (1) year of licensure in the State of Texas, successfully complete a course in Texas nursing jurisprudence. APPLICANT SHALL obtain Board approval of the course prior to enrollment. 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, and documentation of care. Courses focusing on malpractice issues will not be accepted. APPLICANT 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 APPLICANT'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 on the Board's website, www.bne.state.tx.us (under BNE events).*

(7) APPLICANT SHALL, within one (1) year of initial licensure in the State of Texas, successfully complete a course in nursing ethics. APPLICANT SHALL obtain Board approval of the course prior to enrollment. Home study courses and video programs will not be approved. The course shall be a minimum of six (6) contact hours in length. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: principles of nursing ethics; confidentiality; and professional boundaries. APPLICANT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to verify APPLICANT's successful completion of the course. 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 on the Board's website, www.bne.state.tx.us (under BNE events).*

(8) APPLICANT SHALL pay a monetary fine in the amount of two hundred fifty dollars ($250.00). APPLICANT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Board of Nurse Examiners in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, APPLICANT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional nursing in the State of Texas.

APPLICANT'S CERTIFICATION

I am the Applicant in this matter. I have fully and truthfully disclosed all of my past convictions and I have caused a complete and accurate criminal history to be submitted to the Board of Nurse Examiners from each jurisdiction in which I have been convicted. I certify that my past behavior, except as disclosed in my Temporary License/Endorsement Application 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 conviction such as conditional discharge, deferred adjudication or dismissal. I have no criminal prosecution pending in any jurisdiction.

In connection with my application, I acknowledge that I have read and I understand Sections 301.157(d), 301.252, 301.253, 301.260, and 301.452(b) of the Texas Occupations Code, and Chapter 53, Section 53.001 *et seq.*, and Board Rules at 213.27, 213.28, and 213.29 22 Texas Administrative Code which are incorporated by reference as a part of this Order. I agree with all terms of this Order and any stipulations. I agree to inform the Board of any other grounds for denial of licensure prior to accepting any permit or license from the Board of Nurse Examiners.

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.

I understand that I can be represented by an attorney in this matter. I waive representation, notice, administrative hearing, and judicial review of this Order and request that the Executive Director of the Board of Nurse Examiners enter this Order.

Signed this 3rd day of May, 2005.

Thomas William Merrigan

THOMAS WILLIAM MERRIGAN, APPLICANT

Sworn to and subscribed before me this 3rd day of May, 2005.

SEAL

Sandy K. Gardner

Notary Public in and for the State of ~~SF~~ Travis Texas

SANDY K. GARDNER
Notary Public, State of Texas
My Commission Expires
August 22, 2007

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Eligibility Agreed Order that was signed on the 3rd day of May, 2005, by THOMAS WILLIAM MERRIGAN, APPLICANT, for Temporary License/Endorsement Application, and said Order is final.

Effective this 3rd day of May, 2005.

Katherine A. Thomas

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

BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Registered Nurse	§	AGREED
License Number 715250	§	
issued to THOMAS WILLIAM MERRIGAN	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of THOMAS WILLIAM MERRIGAN, Registered Nurse License Number 715250, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10), Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on May 25, 2009, 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 representation by counsel, 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 Winona State University, Winona, Minnesota, on May 25, 1991. Respondent was licensed to practice professional nursing in the State of Texas on May 3, 2005.

5. Respondent's professional nursing employment history is unknown.

6. On or about May 3, 2005, Respondent was issued an Eligibility Agreed Order by the Texas Board of Nursing. A copy of the Findings of Fact, Conclusions of Law, and Eligibility Agreed Order dated May 3, 2005, is attached and incorporated, by reference, as part of this Order.

7. On or about December 19, 2008, Respondent entered a plea of Nolo Contendere and was convicted of CRIMINAL TRESPASS (a misdemeanor offense committed on May 7, 2008), in the County Court at Law No. 3, Travis County, Texas, under Cause No. C-1-CR-08-402981. As a result of the conviction, Respondent was sentenced to confinement in the Travis County Jail for a period of two hundred thirty-four (234) days, with credit for all time of confinement from the date of his arrest, 7 May 2008, through the date of his release, 4 September 2008.

8. In response to Finding of Fact Number Seven (7), Respondent states: "He and his wife separated on on February 3, 2008. In April 2008, his wife shut off his cell phone, so he could no longer contact his children. In April 2008, he contacted Child Protective Services and the Austin Police Department to see about visiting his children. He was told that there was nothing prohibiting or restricting contact between him and his children. As he could not afford an attorney, he finally called his wife and told her he would be coming to visit the children.

On May 7, 2008, he went to his wife's rental house at a time he believed the children would be home from school. There was a strange pick-up truck in the driveway. He rang the bell and knocked but there was no answer. He became concerned that someone was holding his wife and children against their will. Since he no longer had a cell phone, he removed a screen from the backyard window. The window was not locked and opened easily. He opened it and called out, "Hello! Anybody home?" No one answered, so he entered and called out again. A man entered the room and identified himself as the owner of the truck. H recognized him as someone who had been working with his wife. He asked the man, Frank, if he was living there. Frank said no, and told Respondent that he could see his children in proportion to the degree that he contributed to their financial support. His wife came and asked what he was doing there. He told her he had come to see the children. She told him they were not home from school, and that he could not see them without a police order. He told her he had spoken with the Austin Police Department ten days earlier and they had told him he had every right to see his children. At no time did his wife ask him to leave. She told him she could call the police herself and find out if he had a right to see the children when they were in her custody. The police arrived and, without asking Respondent any questions or allowing him to offer to make a statement, they arrested him and charged him with trespassing. When he went before the judge, he acknowledged entering his wife's residence without her consent but he only did so because he was concerned for her and the childrens' safety. Respondent acknowledged that although the police told him he could visit his children, they did not give him permission to enter the house. He states he made an error in judgment and should have used a neighbor's phone to alert the police to his concerns that an intruder was holding his wife and children hostage. He is taking classes in conflict resolution and joint parenting through Travis County Domestic Relations. He and his wife are in the process of divorce mediation and are putting the needs of their children first."

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 violation of Section 301.452(b)(10), Texas Occupations Code, 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 715250, heretofore issued to THOMAS WILLIAM MERRIGAN, including revocation of Respondent's license to practice professional 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 multistate licensure privilege, if any, to practice nursing in compact states.

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 multistate licensure 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 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.

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:

(3) 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.

(4) 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.

(5) 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.

(6) 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 and RESPONDENT shall be eligible for multistate licensure privileges, if any, to practice nursing in the State of Texas.

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CONTINUED ON NEXT PAGE.

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 violation 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 to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 13th day of July, 2009.

Thomas William Merrigan

THOMAS WILLIAM MERRIGAN, Respondent

Sworn to and subscribed before me this 13 day of July, 2009.

SEAL

SHAUNN FOX
Notary Public, State of Texas
My Commission Expires
DECEMBER 20, 2011

Notary Public in and for the State of Texas

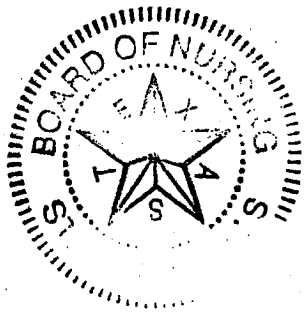
Approved as to form and substance.

Rick Reed

Rick Reed, Attorney for Respondent

Signed this 13th day of July, 2009.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 13th day of July, 2009, by THOMAS WILLIAM MERRIGAN, Registered Nurse License Number 715250, and said Order is final.

Effective this 18th day of August, 2009.

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