BEFORE THE TEXAS BOARD OF NURSING

****

In the Matter of Vocational Nurse	§
License Number 154713	§
issued to JOHNNY HEATH	§

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

ORDER OF THE BOARD

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Vocational Nurse License Number 154713, issued to JOHNNY HEATH, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal conference, notice and hearing.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent's license to practice vocational nursing in the State of Texas is delinquent.

2. Respondent waived representation by counsel, informal conference, notice and hearing.

3. Respondent received a Certificate in Vocational Nursing from Fitzsimmons Army Medical Center, Denver, Colorado, on October 1, 1980. Respondent was licensed to practice vocational nursing in the State of Texas on September 28, 1995.

4. Respondent's vocational nursing employment history includes:

1980 - 1985	Unknown	
1986 - 1992	Supervisor	United States Army Eighth Evacuation Hospital Fort Ord, California
1992 - 1996	Instructor	AMEDD Fort Sam Houston, Texas

Respondent's vocational nursing employment history continued:

1997 - 2005	Agency Nurse Home Health	Personal Touch San Antonio, Texas
04/05 - 01/06	Staff Nurse	Brooke Army Medical Center San Antonio, Texas
12/05 - 03/06	Staff Nurse Home Health	Maxim Healthcare Services San Antonio, Texas
04/06 - 12/06	Unknown	
01/07 - 03/07	Staff Nurse Home Health	Maxim Healthcare Services San Antonio, Texas
04/07 - Present	Unknown	

5. On June 9, 2009, Respondent's license to practice vocational nursing was issued the sanction of Warning with Stipulations by the Texas Board of Nursing. A copy of the June 9, 2009, Agreed Order, Findings of Fact and Conclusions of Law is attached and incorporated, by reference, as part of this Order.

6. On or about June 11, 2010, Respondent failed to comply with the Agreed Order issued to him on June 9, 2009, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Two (2) of the Agreed Order which states, in pertinent part:

   > (2) Respondent shall, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics....

7. On or about June 11, 2010, Respondent failed to comply with the Agreed Order issued to him on June 9, 2009, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Three (3) of the Agreed Order which states, in pertinent part:

   > (3) Respondent shall, within one (1) year of entry of this Order, successfully complete a course in physical assessment....

8. On or about June 11, 2010, Respondent failed to comply with the Agreed Order issued to him on June 9, 2009, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Four (4) of the Agreed Order which states, in pertinent part:

> (4) Respondent shall, within one (1) year of entry of this Order, successfully complete the course "Sharpening Critical Thinking Skills"....

9. On June 25, 2010, Respondent submitted a signed and notarized affidavit to the Board expressing his desire to voluntarily surrender the right to practice vocational nursing in the State of Texas in lieu of complying with the Agreed Order issued to Respondent on June 9, 2009. A copy of the June 25, 2010, notarized statement is attached and incorporated, by reference, as part of this Order.

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 violation of Section 301.452(b)(1) and (10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12 (11)(B).

4. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.

5. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.

6. Any subsequent reinstatement of this license will be controlled by Section 301.452 (b), Texas Occupations Code, and 22 TAC§§213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Vocational Nurse License Number 154713, heretofore issued to JOHNNY HEATH, to practice vocational nursing in the State of Texas, is accepted by the Executive Director on behalf of the Texas Board of Nursing. In connection with this acceptance, the Board imposes the following conditions:

1. RESPONDENT SHALL NOT practice vocational nursing, use the title of "vocational nurse" or the abbreviation "LVN" or wear any insignia identifying himself as a vocational nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a vocational nurse during the period in which the license is in surrendered status.

2. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure and shall not petition for reinstatement until at least one (1) year has elapsed since the effective date of this Order.

3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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

Effective this 10th day of September, 2010.

TEXAS BOARD OF NURSING

By: 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 Vocational Nurse	§	AGREED
License Number 154713	§	
issued to JOHNNY HEATH	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of JOHNNY HEATH, Vocational Nurse License Number 154713, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10)&(13), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on April 3, 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's license to practice vocational nursing in the State of Texas is in delinquent status.

4. Respondent received a Certificate in Vocational Nursing from Fitzsimons Army Medical Center, Aurora, Colorado, on October 1, 1981. Respondent was licensed to practice vocational nursing in the State of Texas on September 28, 1995.

5. Respondent's vocational nursing employment history includes:

1980 - 1985	Unknown

Respondent's vocational nursing employment history continued:

1986 - 1992	Supervisor	United States Army Eighth Evacuation Hospital Fort Ord, California
1992 - 1996	Instructor	AMEDD Fort Sam Houston, Texas
1997 - 2005	Agency Nurse Home Health	Personal Touch San Antonio, Texas
4/05 - 1/06	Staff Nurse	Brooke Army Medical Center San Antonio, Texas
12/05 - 3/06	Staff Nurse Home Health	Maxim Healthcare Services San Antonio, Texas
4/06 - 12/06	Unknown	
1/07 - 3/07	Staff Nurse Home Health	Maxim Healthcare Services San Antonio, Texas
4/07 - Present	Unknown	

6. At the time of the initial incident in Finding of Fact Number Seven (7), Respondent was employed as a Home Health Nurse with Maxim Healthcare Services, San Antonio, Texas, and had been in this position for two (2) months.

7. On or about March 11, 2007, while employed as a Home Health Nurse with Maxim Healthcare Services, San Antonio, Texas, Respondent failed to provide adequate care for Patient Medical Record Number 52300462 in that he failed to reassess that patient's heart rate after obtaining an elevated reading of 140 at the beginning of his shift. Even though the vital signs were not ordered to be taken at specific times, the reading of 140 was the highest rate that had been recorded for several days and could have been indicative of complications. Respondent's conduct was likely to injure the patient from undetected progression of clinical complications, including, but not limited to, respiratory distress and possible death.

8. On or about March 11, 2007, while employed as a Home Health Nurse with Maxim Healthcare Services, San Antonio, Texas, Respondent failed to provide adequate care for Patient Medical Record Number 52300462 in that he abandoned the patient at approximately 0800 when he left his assignment prior to the subsequent nurse's arrival. Respondent did not report off to the patient's mother nor did he contact the agency to report that the on-coming nurse was late. Furthermore, Respondent removed the patient from the continuous positive air pressure (CPAP)

machine prior to his leaving. As a result, when the subsequent nurse arrived at approximately 0810, she found the patient in respiratory distress with an oxygen saturation level low at 86%. The patient's symptoms resolved during the day with no further complications. Respondent's conduct was likely to injure the patient in that removing the patient from the CPAP machine and then leaving the patient unattended could result in the patient experiencing respiratory distress and possible death.

9. In response to the incidents in Findings of Fact Numbers Seven (7) and Eight (8), Respondent denies the allegations, stating that he informed the patient's mother, who was reportedly cleaning the upstairs bathroom, that "the on-coming nurse had not reported in yet and I needed to leave." Respondent explains that he informed the mother that the patient had been taken off the CPAP, "as per her instructions." Respondent goes on to explain that he did administer the morning medications and documented that they had been administered. In conclusion, Respondent states that he only worked every other weekend for this patient. He adds that he questioned the mother regarding how she was able to get so much assistance, including medical supplies, and the mother responded that the nurses would "pick the seven worst days and write the re-certification which would then be given to Maxim and then they would forward to the State. I believe that all the allegations are stemming directly from my actions of reporting this client's mother to the state for Medicaid fraud."

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.555, the Board has jurisdiction over this matter.

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove violations of Section 301.452(b)(10)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §§217.11(1)(A),(1)(B),(1)(I),(1)(M)&(2)(A) and 217.12(1)(A),(1)(B),(4)&(12).

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 154713, heretofore issued to JOHNNY HEATH, including revocation of Respondent's license to practice vocational 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 deliver the wallet-sized license issued to JOHNNY HEATH, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of this Order.

(2) 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 <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.*

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in physical assessment. RESPONDENT SHALLobtain 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. The didactic portion of this course shall be a minimum of six (6) hours in length. RESPONDENT SHALL perform physical assessments on live patients in a clinical setting for a minimum of twenty-four (24) hours. The clinical component SHALL focus on tasks of physical assessment only and shall be provided by the same Registered Nurse who provides the didactic portion of this course. To be approved, the course shall cover all systems of the body. Performing assessments on mock patients or mannequins WILL NOT be accepted. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor 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*.

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 VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(5) 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.

(6) 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.

(7) RESPONDENT SHALL be supervised by a Registered Nurse or 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.

(8) 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 or Licensed Vocational 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.

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

Signed this 23 day of April, 2009.

JOHNNY HEATH, Respondent

Sworn to and subscribed before me this 23RD day of April, 2009.

SEAL

CYNTHIA ANN CLOW
Notary Public, State of Texas
My Commission Expires
January 09, 2012

Notary Public in and for the State of TEXAS

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 23rd day of April, 2009, by JOHNNY HEATH, Vocational Nurse License Number 154713, and said Order is final.

Effective this 9th day of June, 2009.

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

Johnny Heath
7371 Golf Vista Blvd.
San Antonio, Texas 78244
Texas LVN License #154713

Voluntary Surrender Statement

Dear Texas Board of Nursing:

I no longer desire to be licensed as a vocational nurse. Accordingly, I voluntarily surrender my license to practice in Texas. I waive representation by counsel and consent to the entry of an Order which outlines requirements for reinstatement of my license. I understand that I will be required to comply with the Board's Rules and Regulations in effect at the time I submit any petition for reinstatement.

Signature _____

Date 21 JUNE 2010

Texas LVN License Number 154713

The State of Texas

Before me, the undersigned authority, on this date personally appeared Johnny Heath, who, being duly sworn by me, stated that he executed the above for the purpose therein contained and that he understood same.

Sworn to before me the 21ST day of JUNE, 2010.

SEAL

_____

Notary Public in and for the State of TEXAS

CYNTHIA ANN CLOW
Notary Public, State of Texas
My Commission Expires
January 09, 2012