BEFORE THE TEXAS BOARD OF NURSING

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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

In the Matter of Registered Nurse	§	AGREED
License Number 562128	§	
issued to CYNTHIA GAIL CLAYTON	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Boa considered the matter of CYNTHIA GAIL CLAYTON, Registered Nurse License Number 5621 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 November 5, 2010, by Katherine A. Thomas, MN, RN, Executive Director, subject to ratification by the Board.

FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).

2. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order.

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

4. Respondent received an Associate Degree in Nursing from Abilene Intercollegiate, Abilene, Texas on May 5, 1990. Respondent was licensed to practice professional nursing in the State of Texas on August 31, 1990.

5. Respondent's professional nursing employment history includes:

1990 - 2007	RN	The Woman's Hospital of Texas Houston, Texas
2007 - Present	Unknown	

6. On March 18, 2009, Respondent was issued an Agreed Order by the Texas Board of Nursing which required her to participate in and successfully complete the Texas Peer Assistance Program for Nurses (TPAPN). A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated March 18, 2009, is attached and incorporated, by reference, as part of this Order.

7. On or about June 28, 2010, Respondent plead guilty and was convicted of "Driving While Intoxicated, 2nd Offense," a Class A Misdemeanor (committed on June, 12, 2009), in the 400th Judicial District Court of Fort Bend County, Texas, under Cause Number 52466. Respondent was sentenced to confinement for a period of one (1) year in the Fort Bend County jail. The imposition of the confinement was suspended, and Respondent was placed on probation for a period of two (2) years.

8. Respondent admits to the conduct outlined in Finding of Fact Number Seven (7). Respondent states that although the arrest does post-date the ratification of the TPAPN Order it does pre-date her enrollment in TPAPN. She states that prior to her enrollment in TPAPN she had never received adequate treatment and was having difficulty remaining sober. She maintains that her sobriety date is the day after her arrest for the last DWI. Respondent states that since signing the TPAPN participation agreement she has been in full compliance with the program including successful completion of the Intensive Outpatient Program, ninety (90) AA meetings in ninety (90) days, maintaining a sponsor, the submission of all negative drug screens, and incident-free practice as a nurse. Respondent states that she has gained a lot from the treatment and tools for sobriety she has received from TPAPN.

9. The Board finds that there exists serious risks to public health and safety as a result of impaired nursing care due to intemperate use of controlled substances or chemical dependency.

CONCLUSIONS OF LAW

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

2. Notice was served in accordance with law.

3. The evidence received is sufficient to prove 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 562128, heretofore issued to CYNTHIA GAIL CLAYTON, including revocation of Respondent's license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 562128, previously issued to CYNTHIA GAIL CLAYTON, to practice professional nursing in Texas is hereby SUSPENDED for a period of two (2) years with the suspension STAYED and Respondent is hereby placed on PROBATION for a period of two (2) years with the following agreed terms of probation:

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

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this order the Respondent may not work outside the State of Texas pursuant to a nurse licensure compact privilege without the written permission of the Texas Board of Nursing and the Board of Nursing in the party state where Respondent wishes to work.

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

(2) The stipulations outlined and required herein SHALL supercede all previous stipulations required by any Order entered by the Texas Board of Nursing.

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment only if the course is <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://ncsbn.hivelive.com/hives/a0f6f3e8a0/summary.*

(5) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars ($500.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check

or U.S. money order. Partial payments will not be accepted.

(6) IT IS FURTHER AGREED, SHOULD RESPONDENT be revoked of probation imposed for the offense as outlined in Finding of Fact Number Seven (7), said judicial action will result in further disciplinary action including Revocation of Respondent's license to practice nursing in the State of Texas.

IT IS FURTHER AGREED, SHOULD RESPONDENT PRACTICE AS A NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, NURSING HOME, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS FOR TWO (2) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH TWENTY-FOUR (24) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE THE USE OF A REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD:

(7) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each present employer within five (5) days of receipt of this Order. RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any,

to each future employer prior to accepting an offer of employment.

(8) 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.

(9) For the first year of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse. Direct supervision requires another professional 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.

(10) For the remainder of the probation period, 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.

(11) 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.

(12) 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.

(13) 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.

(14) RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month period for two (2) years of employment as a nurse.

(15) 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.**

(16) 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 and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

(18) RESPONDENT SHALL CAUSE her probation officer to submit written reports on forms provided to the Respondent by the Board. The reports shall indicate the RESPONDENT'S compliance with the court ordered probation. The reports shall be furnished each and every three (3) month period until RESPONDENT is released from probation.

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 to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I have reviewed this Order. I neither admit nor deny the 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 nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 28 day of Dec, 2010.

CYNTHIA GAIL CLAYTON, Respondent

Sworn to and subscribed before me this 28 day of Dec, 2010.

SEAL

AUSTIN W. ADAMS
Notary Public, State of Texas
My Commission Expires
June 10, 2014

Notary Public in and for the State of Texas

Approved as to form and substance.

DAN LYPE, Attorney for Respondent

Signed this 28 day of December, 2010.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 28th day of December, 2010, by CYNTHIA GAIL CLAYTON, Registered Nurse License Number 562128, and said Order is final.

Effective this 8th day of February, 2011.

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

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse	§	AGREED
License Number 562128	§	
issued to CYNTHIA GAIL CLAYTON	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of CYNTHIA GAIL CLAYTON, Registered Nurse License Number 562128, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on January 13, 2009, by Katherine A. Thomas, MN, RN, Executive Director.

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 holds a license to practice professional nursing in the State of Texas, which is currently in delinquent status.

4. Respondent received a Baccalaureate Degree in Nursing from Abilene Intercollegiate, Abilene, Texas, on May 1, 1990. Respondent was licensed to practice professional nursing in the State of Texas on August 31, 1990.

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

6. On or about April 15, 2007, Respondent was arrested by the Sugar Land Police Department, Sugar Land, Texas, for DRIVING WHILE INTOXICATED (a Class B misdemeanor

offense). On or about July 12, 2007, Respondent entered a plea of Nolo Contendere and was convicted of DRIVING WHILE INTOXICATED (a Class B misdemeanor offense committed on April 15, 2007), in the County Court at Law No. One (1) of Fort Bend County, Texas, under Cause No. 130677. As a result of the conviction, Respondent was sentenced to confinement in the Fort Bend County Jail for a period of ten (10) days.

7. On or about April 16, 2007, Respondent was arrested by the Bellaire Police Department, Bellaire, Texas, for DRIVING WHILE INTOXICATED (a Class B misdemeanor offense). On or about July 26, 2007, Respondent entered a plea of Nolo Contendere and was convicted of DRIVING WHILE INTOXICATED (a Class B misdemeanor offense committed on April 16, 2007), in the County Criminal Court at Law No. 12, of Harris County, Texas, under Cause No. 1448041. As a result of the conviction, Respondent was sentenced to confinement in the Harris County Jail for a period of six (6) days.

8. The Respondent's conduct described in the preceding Finding of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.

9. 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.

10. Respondent's conduct described in Finding of Fact Number resulted from Respondent's impairment by dependency on chemicals.

11. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

CONCLUSIONS OF LAW

1. Pursuant to Texas Occupations Code, Sections 301.451-301.455, 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)(9)&(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 562128, heretofore issued to CYNTHIA GAIL CLAYTON, including revocation of Respondent's license to practice nursing in the State of Texas.

5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

RESPONDENT SHALL deliver the wallet-sized license issued to CYNTHIA GAIL CLAYTON, to the office of the Texas Board of Nursing within ten (10) days from the date of ratification of this Order.

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to TPAPN and SHALL, within ninety (90) days following the date of entry of this final Order, sign and execute the TPAPN participation agreement, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars ($500) payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term and SHALL keep her license to practice nursing in the State of Texas current.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, Section §§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 privileges, if any, to practice nursing in the State of Texas.

IT IS FURTHER AGREED and ORDERED that while Respondent's license is encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a 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, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in further disciplinary action including revocation of Respondent's license and multistate licensure privileges, if any, to practice nursing in the State of Texas.

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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. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Texas Board of Nursing, 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 March, 2009

CYNTHIA GAIL CLAYTON, Respondent

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

SEAL

KULSOOM AHSAN
Notary Public
STATE OF TEXAS
My Comm. Exp. 03-27-11

Kulsoom Ahsan

Notary Public in and for the State of TEXAS

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 13th day of March, 2009, by CYNTHIA GAIL CLAYTON, Registered Nurse License Number 562128, and said Order is final.

Entered and effective this 18th day of March, 2009.

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