

DOCKET NUMBER 507-09-4355

IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 722748  
DON POLICARPIO MEILY

§  
§  
§  
§

BEFORE THE STATE OFFICE  
  
OF  
ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: DON POLICARPIO MEILY  
C/O VICTORIA WARNER  
11102 LIBERTY GROVE  
ROWLETT, TX 75089

STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 22-23, 2010, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of Don Policarpio Meily without changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the abovestyled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. Staff filed exceptions to correct two technical errors in the PFD regarding the name of the Board's testifying nursing practice consultant and the identity of a testifying witness. The Respondent did not file any exceptions. The ALJ issued a ruling on June 22, 2010, granting Staff's exceptions. The ALJ's order of June 22, 2010, corrected the name of the Board's testifying nursing practice consultant on page 6 of the PFD and modified Finding of Fact Number 17 to correctly identify the testifying witness.



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.  
*Stephanie P. Warner*  
Executive Director of the Board

The Board, after review and due consideration of the PFD, Staff's exceptions, the ALJ's order of June 22, 2010, Staff's recommendations, and Respondent's presentation during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD, including Finding of Fact Number 17 which was modified by the ALJ in his order of June 22, 2010, as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 722748, previously issued to DON POLICARPIO MEILY, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that Permanent Certificate Number 722748, previously issued to DON POLICARPIO MEILY, upon receipt of this Order, be immediately delivered to the office of the Texas Board of Nursing.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

Entered this 23rd day of July, 2010.

TEXAS BOARD OF NURSING

  
KATHERINE A. THOMAS, MN, RN  
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-09-4355 (May 3, 2010).

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge  
May 3, 2010

Katherine A. Thomas, M.N., R.N.  
Executive Director  
Texas Board of Nursing  
333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701

**VIA INTER-AGENCY**

**RE: Docket No. 507-09-4355; In The Matter Of Permanent Certificate No. 722748 Issued To Don Policarpio Meily**

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "Stephen J. Pacey".

Stephen J. Pacey  
Administrative Law Judge

SJP/Ls

Enclosures

XC: R. Kyle Hensley, Assistant General Counsel, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701  
- **VIA INTER-AGENCY**  
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - (with 1 CD) -  
**VIA INTER-AGENCY**  
Victoria Warner, 11102 Liberty Grove, Rowlett, TX 75089 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-09-4355

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE NO. 722748	§	
ISSUED TO	§	OF
	§	
DON POLICARPIO MEILY	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought action against Don Policarpio Meily (Respondent) for violating the Nursing Practice Act<sup>1</sup> and the Board's rules.<sup>2</sup> Staff sought to revoke Respondent's license as a registered nurse (RN) and sought to impose on Respondent administrative costs of the proceeding pursuant to Code § 301.461. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked but that administrative costs not be imposed on Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing originally convened July 30, 2009, before ALJ Stephen J. Pacey in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel. Respondent was represented by attorney Victoria Warner. The hearing was adjourned that day. Staff's August 21, 2009 brief included a motion to reopen the evidence on the basis that Respondent had additional allegations of sexual conduct with patients and a coworker.

On September 3, 2009, the ALJ granted the motion on the basis of judicial economy. New matters that are of the same nature as the previous allegation should be heard together. After the ALJ instructed Staff to amend its notice of hearing to include the new allegations, Staff, on October 20, 2009, issued the First Amended Notice of Hearing setting the hearing for January 28, 2010. On that date, the ALJ reconvened and adjourned the hearing with the same attorneys representing the parties.

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<sup>1</sup> TEX. OCC. CODE (Code) ch. 301 *et seq.*

<sup>2</sup> 22 TEX. ADMIN. CODE (TAC) ch. 211 *et seq.*

The record closed on March 2, 2010, at the conclusion of the briefing schedule established by the ALJ.

Matters concerning notice and jurisdiction were undisputed. Those matters are set out in the Findings of Fact and Conclusions of Law.

## II. APPLICABLE LAW

RNs are subject to disciplinary action by the Board, including license suspension or revocation,<sup>3</sup> for engaging in unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public.<sup>4</sup> Additionally, the Board may take disciplinary action against an RN who fails to care adequately for a patient or conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to a risk of harm.<sup>5</sup>

The Board's rules have defined unprofessional conduct for which RNs may be disciplined to include: causing or permitting physical, emotional, or verbal abuse or injury or neglect to the client or the public;<sup>6</sup> violating professional boundaries of the nurse/client relationship including physical, sexual, or emotional exploitation;<sup>7</sup> or engaging in sexual conduct with a client, touching a client in a sexual manner, or requesting or offering sexual favors by language or suggestive behavior.<sup>8</sup>

The Board's rules also provide for disciplinary sanctions against RNs who fail to conform to the minimum standards of acceptable nursing practice, regardless of whether actual injury to any person was sustained. These minimum standards require that RNs recognize and maintain professional

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<sup>3</sup> Code § 301.453(a).

<sup>4</sup> Code § 301.452b(10).

<sup>5</sup> Code § 301.452b(13).

<sup>6</sup> 22 TAC § 217.12(6)(C).

<sup>7</sup> 22 TAC § 217.12(6)(D).

<sup>8</sup> 22 TAC § 217.12(6)(E).

boundaries of the nurse-client relationship,<sup>9</sup> and that they implement measures to promote a safe environment for clients and others.<sup>10</sup>

The Board is required to adopt a schedule of disciplinary sanctions to ensure that the severity of sanctions imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.<sup>11</sup> In determining the appropriate disciplinary action, the Board is required to consider whether previous disciplinary action has been imposed, whether multiple violations were committed, the seriousness of the violation(s), the threat to public safety, and any mitigating factors.<sup>12</sup> A history of disciplinary action or the commission of multiple violations may warrant the imposition of more severe sanctions, including license revocation.<sup>13</sup>

### III STAFF'S FORMAL CHARGES

#### A. Charge One

Charge one was the subject matter of the original hearing. Staff's charge one against Respondent is as follows:

On March 15, 2008, while employed by Baylor University Medical Center, Dallas, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he inappropriately touched a patient (M.G.) on her perineal area while changing a dressing on her left thigh, constituting grounds for disciplinary action in accordance with Code § 301.452(b)(10)and(13) and in violation of 22 TAC §§ 217.12(1)(B), (6)(D),and (6)(E) and 217.11(1)(A), (B), & (J).

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<sup>9</sup> 22 TAC § 217.11(1)(J).

<sup>10</sup> 22 TAC § 217.11(1)(B).

<sup>11</sup> Code § 301.4531(a).

<sup>12</sup> Code § 301.4531(b).

<sup>13</sup> Code § 301.4531(c).

**B. Charge Two**

Charge two was part of the subject matter of the second hearing. Staff's charge two against Respondent is as follows:

On July 8, 2008, while employed by Centennial Medical Center, Frisco, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he kissed a patient (S.I.) on the mouth, stroked her thigh and leaned over her, placing his erect penis on her, constituting grounds for disciplinary action in accordance with Code § 301.452(b)(10) and (13) and in violation of 22 TAC §§ 217.12(1)(B), (6)(D), and (6)(E) and 217.11(1)(A), (B), and (J).

**C. Charge Three**

Charge three was part of the subject matter of the second hearing. Staff's charge three against Respondent is as follows:

On October 3, 2008, while employed by Centennial Medical Center, Frisco, Texas, Respondent violated the professional boundaries of the nurse/client relationship in that he digitally penetrated the vagina of a patient (C.I.) and stroked her clitoris, constituting grounds for disciplinary action in accordance with Code § 301.452(b)(10) and (13) and in violation of 22 TAC §§ 217.12(1)(B), (6)(D), and (6)(E) and 217.11(1)(A), (B), & (J).

**IV. SUMMARY OF ALLEGATIONS AND EVIDENCE**

Staff submitted multiple exhibits and provided testimony of John Lehman, Ph.D., clinical psychologist; David W. Ramsey, polygraph examiner; Denise Benbow, Nursing Practice Consultant; C.I., alleged victim of Charge No. 3; and S.H., alleged victim of Charge No. 2. Respondent also submitted multiple exhibits and provided the testimony of Anna Shursen, Ph.D., a sex offender therapist, and Respondent, who testified on his own behalf.

## 1. Testimony of John Lehman, Ph.D.

The Board asked Dr. Lehman to evaluate Respondent and make a recommendation. Dr. Lehman testified and reported<sup>14</sup> that Respondent was presented for an evaluation for the Board following allegations that Respondent, while working at Baylor Hospital, violated professional boundaries by inappropriately touching a female patient. Dr. Lehman said that according to the hospital records, M.G. was a post-surgical patient under Respondent's care on March 15, 2008. M.G. had just had her hip fused, and Respondent was in her room to change her dressings and her foley catheter. While changing her dressing, Respondent was accused of touching the patient's inner thigh and perineal area.

Dr. Lehman said that Respondent vehemently denied the allegation in its entirety, and even submitted an affidavit to the Board denying the allegation. Dr. Lehman testified that it was only after Respondent failed the polygraph that he admitted that the allegation was true. According to Dr. Lehman, Respondent's testing shows that he tries to portray a positive image. In Dr. Lehman's opinion, the tests show one who anxiously conforms to other people's expectations and is defensive about admitting psychological problems.

Dr. Lehman recommended that Respondent be involved with therapy from a certified sex offender treatment specialist, and the Board limit his license to non-patient care until he has completed a course of treatment.<sup>15</sup>

## 2. Testimony of Donald Ramsey

Mr. Ramsey is polygraph examiner with 16 years FBI experience and 7 years NCIS experience. Mr. Ramsey testified that Respondent failed the test when he was asked about the

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<sup>14</sup> Staff's Exh. 12.

<sup>15</sup> Dr. Lehman was not called as a witness at the second hearing; consequently, his specific testimony is related to Charge No. 1. This limitation does not apply to Dr. Lehman's more general evaluation of Respondent. However, his general evaluation of Respondent is relevant to all three charges.

incident and more specifically, the touching of the inner thigh or other pubic area of the patient for sexual reasons. Mr. Ramsey said Respondent then admitted that he touched her inner thigh and was sexually excited by the action. According to Mr. Ramsey, Respondent admitted touching her in her pubic area explaining that he lost control for a split second.

### 3. Testimony of Anna Benbow

Ms. Benbow has been an RN since 1984. As a Nurse Practicing Consultant for the Board since 2007, Ms. Benbow answers inquiries about the Nursing Practice Act, and teaches the jurisprudence and ethics course.

Ms. Benbow testified that, according to the guidelines on professional boundaries of the National Council of State Boards of Nursing, sexual misconduct is one of the endpoints of over-involvement that places the patient at risk and would be considered to be a professional boundary violation. She stated that if the allegations against Respondent were proved, revocation of his license would be the appropriate sanction. Ms. Benbow testified on both hearing dates.

In the second hearing date, Ms. Benbow testified that Respondent's license should be revoked because he has a pattern of sexual contact with patients. She said the conduct with both C.I. and S.H. was dishonorable and violated the nurse-patient relationship. According to Ms. Benbow, Respondent exceeding the boundaries of the nurse-patient relationship; consequently, his license should be revoked and he should not receive another license until his therapy is completed and he has completed a risk prevention program.<sup>16</sup>

In Ms. Benbow's opinion, all three women suffered emotional harm, and Respondent's conduct may have caused delayed distress for the patients, which may not be recognized or felt by the patient until harmful circumstances occur. She said that C.I. suffered emotional damage that manifested itself in lost weight and sleeplessness. Ms. Benbow asserted that S.H. felt shocked and

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<sup>16</sup> A person is eligible to reapply for a nurse's certificate one year after revocation.

violated and now has a distrust of nurses.

#### **4. Testimony of C.I.**

C.I. is an RN who drove from Dallas to testify against Respondent. She was a patient in Centennial Hospital in Frisco, Texas. She testified that on October 1, 2008, she had surgery to repair a hernia, during which the doctors noticed she could have a problem with her ovaries. Rather than close the surgery, the doctors waited until a gynecologist arrived. This caused the duration of the surgery to be greater than usual, and C.I. said she was in excruciating pain. C.I. said that after the recovery nurses left, Respondent while checking her wound touched her clitoris three times and put his finger in her vagina. She said she saw him do it, even though it was done very quickly. She responded by pulling the sheet up and said that had she not done so, he would have stuck his entire finger in her. She said that the surgical procedure was not done vaginally, and she did not have a foley catheter; consequently, Respondent had no reason to be around the pubic area.

In C.I.'s opinion, Respondent did not realize that she knew what he had done; consequently, Respondent continued to come into her room even when he was not her nurse. Over her hospital stay he kissed her on the forehead five to seven times. According to C.I., she was afraid to report Respondent because he might put something in her intravenous (IV) fluid. C.I. said that she had lost weight and sleep as a result of Respondent's conduct.

#### **5. Testimony of S.H.**

S.H. also drove from Dallas to testify at the hearing. S.H. testified that she was a patient at Centennial Hospital when Respondent became her nurse in late June of 2008. S.H. said that Respondent would make random comments like how wonderful she smelled, how sexy she was, and how nice she looked. He would also give her hugs. S.H. asserted on or about July 8, 2008, Respondent kissed her on the lips, stroked her thigh very near the pubic area, and while adjusting her IV, he leaned over her and placed an erection on her for about five seconds. She testified that he could have easily gone around the bed to adjust the IV. S.H. said that she was in shock, and felt

violated, angry, and shameful.

## 6. Testimony of Respondent

After initially lying about the incident to the hospital, Dr. Lehman, his wife, and through affidavit<sup>17</sup> to the Board, Respondent admitted that he had touched patient M.S. in the perineal area. At the hearing, Respondent testified that he became sexually aroused while checking the female patient's upper thigh dressing and touched the patient from the vulva to the anus. Respondent stated that he lied because he was in denial and had fear and anxiety that his wife would find out. Respondent said he was fired by Baylor University Medical Center over this incident.

In response to questioning by Staff, Respondent admitted to incidents with Elizabeth Rodriguez a fellow nurse at Centennial Medical Center. Respondent testified that in October 2008, he tickled and tried to hug Ms. Rodriguez. He testified and she explained in an e-mail that he asked for her phone number, tried to hug her, tried to kiss her on the lips but like a friend, and after grabbing a hook on her pants and pulling, the top of her underwear was showing. Respondent said that she filed sexual harassment charges. Respondent said he did not want Centennial to continue to investigate this and the other two charges, so he resigned on October 23, 2008.<sup>18</sup>

Respondent vehemently denied both C.I.'s and S.H.'s testimony. He portrayed S.H. as bipolar and said that she was admitted to the hospital after taking 20 Darvocets, which was eventually diagnosed as an accidental overdose. According to Respondent, SH told him that she appreciated his care, and she pulled Respondent down toward her and attempted to give him a goodbye kiss on his cheek, but their lips briefly brushed. Respondent said that he reciprocated and gave her a goodbye hug. Respondent testified that even though their lips brushed, he did not stroke her legs in a sexual manner. According to Respondent, he may have leaned against S.H. to adjust her IV, but he never did so with an erection. He said that he was not attracted to S.H., so he was not sexually aroused.

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<sup>17</sup> Staff's Exh. 5.

<sup>18</sup> Staff did not file charges concerning the Rodriguez incident.

Respondent described S.H. as a drug seeker who seeks retribution if someone fails to give her the drugs she wants when she wants them.

Respondent testified that Dr. Lehman prescribed therapy for Respondent and gave him a list of sex offender providers. From that list, Respondent chose Anna Shursen, Ph.D. Respondent noted that he has been to over 35 therapy sessions. In his opinion, he is a much better mental frame of mind today after his therapy. He noted that he has not had any patient's sexual allegation against him since 2008, and he was picked employee of the month by his current employer. Respondent desires to retain his nurse's license and is willing on taking a polygraph test concerning charge two and three.

#### **7. Testimony of Anna Shursen, Ph.D.**

Dr. Shursen testified that Respondent is doing well in therapy. She said he has invested in the program and participates in discussion. According to Dr. Shursen, Respondent will complete the sexual history module and take his sex history polygraph in February and then move into other assignments such as the Relapse Prevention workbook. She noted that Respondent takes responsibly for the initial charge, but denies the additional charges.

Dr. Shursen was insistent that Respondent is a very low risk to relapse. She based this opinion on a number of factors. Dr. Shursen explained that Respondent has a very good control group with his wife, friends, and fellow workers. She testified that she has recently given Respondent a battery of tests including the Dynamic Risk Assessment test. Dr. Shursen said that these tests indicate that Respondent is a very low risk to reoffend, is not a sexual deviant, and has less than 10% risk of a relapse.

Dr. Shursen testified that Respondent should be finished with therapy this summer. She noted that Respondent should keep his license and continue to treat patients because, in her opinion, there is no danger of his reoffending.

## V. ANALYSIS AND RECOMMENDATION

### A. Violations

The evidence in this case reveals that three different women, with no suggested ties to one another, made allegations at different times that Respondent, while working as an RN, engaged in inappropriate and unwelcome contact with them, which made them feel uncomfortable and upset. Respondent has admitted to touching patient M.G. in the perineal region and experiencing sexual excitement; therefore, this violation will not be mentioned further in this violation section. Respondent denied all of the allegations and provided similar, but exculpatory versions of the events described by each of the women. If this were a “he-said/she-said” case, concerning a single incident, it would be much more difficult to determine whether a violation occurred. But this is a “he-said/they-said” case. And an examination of the evidence, taken as a whole, indicates that it is more likely than not that Respondent engaged in several instances of unprofessional conduct that violated the Board’s rules.

In order to find otherwise, the ALJ would have to find that the witnesses who testified about Respondent’s conduct were either lying or mistaken. And there is no evidence to suggest that they were either. The evidence does not substantiate any motives for any of the witnesses to lie, despite Respondent’s purely speculative and unconvincing attempts to suggest such motives. Further, both these witnesses drove from Dallas to Austin to testify against Respondent. It appears highly unlikely that the witnesses would voluntarily drive that far and lie.

Respondent asserted that in C.I.’s testimony she was very vague about many details, and she was so overwhelmed with all the other events occurring her life at that time, that her memory and judgment were impaired. The ALJ does not find this persuasive. Except for the initial sexual contact, Respondent’s conduct to C.I. was the same or similar to that described by S.H. and M.G. Respondent’s claim that SH had issues outside the scope of this hearing also is unpersuasive.

Based on the above analysis, the ALJ finds that the preponderance of the evidence establishes that Respondent is subject to disciplinary sanctions for committing multiple violations of the Board's rules prohibiting a nurse from violating professional boundaries of the nurse/client relationship, and multiple violations of the rules prohibiting sexual contact with a patient.

## **B. Sanctions**

The board is legally authorized to revoke Respondent's RN license based on the unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public. The Board's Disciplinary matrix categorizes sexual contact with a patient as a Third Tier offense justifying revocation.

Respondent's behavior toward these three women was clearly inappropriate and disturbing, and cannot be ignored or excused. The fact that Respondent has engaged in multiple violations of professional conduct rules confirms the need for discipline. Based on the totality of the evidence, the ALJ recommends that Respondent's RN license be revoked.

## **V. FINDINGS OF FACT**

1. Don Policarpio Meily (Respondent) is a registered nurse (RN) and holds License Number 722748 issued by the Texas Board of Nursing (Board/Staff).
2. On May 21, 2009, Staff sent Respondent a notice of hearing that notified Respondent of the Formal Charges against him. October 29, 2009, Staff sent Respondent First Amended notice of hearing that notified Respondent of the First Amended Formal Charges against Respondent.
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. The hearing on the merits was first held on July 30, 2009, in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. All parties appeared and participated in the hearing. The record was held open to allow briefing.

5. On August 21, 2009, Staff submitted a motion to reopen the evidence on the basis that it desired to file additional allegations.
6. On September 3, 2009, the ALJ granted the motion, and on October 20, 2009, Staff issued a First Amend Notice of Hearing and First Amended Notice of Hearing.
7. The second part of the hearing on the merits was held on January 28, 2010, in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. All parties appeared and participated in the hearing. The record was held open to allow briefing and was closed on March 2, 2010.
8. On or about March 15, 2008, while working as a RN at Baylor University Medical Center, Dallas, Texas, Respondent inappropriately touched a patient (M.G.) on her perineal area while changing a dressing on her left thigh.
9. M.G. reported the incident to hospital personnel.
10. M.G. was upset and disgusted by Respondent's behavior.
11. Respondent denied the allegation in its entirety, and even submitted an affidavit to the Board denying the allegation.
12. Respondent admitted that the allegation was true only after he failed a polygraph test. He admitted becoming sexually aroused by the encounter.
13. Baylor University Medical Center fired Respondent.
14. On or about July 8, 2008, while working as a RN at Centennial Medical Center, Frisco, Texas, Respondent kissed a patient (S.H.) on the mouth, stroked her thigh, and leaned over her, placing his erect penis on her.
15. S.H. felt violated, angry, and shameful.
16. On or about October 3, 2008, while working as a RN at Centennial Medical Center, Frisco, Texas, Respondent digitally penetrated the vaginal and stroked the clitoris of a patient (C.I.).
17. S.H. was upset and disgusted by Respondent's behavior, and lost weight and sleep.
18. Respondent resigned from Centennial Medical Center on October 23, 2008, to avoid further investigation.
19. Respondent has consistently denied the accusations of C.I. and S.H.
20. Staff offered no evidence in support of the imposition of the administrative costs of this

proceeding.

#### IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the formal charges and of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Staff had the burden of proving the case by a preponderance of the evidence.
5. Staff established by a preponderance of the evidence that Respondent engaged in sexually inappropriate conduct with M.G., S.H., and C.I., subjecting him to a possible sanction under Code §301.452(b) (10) and 22 Tex. Admin. Code § 217.12(6) (C).
6. The Board should revoke Respondent's license but administrative costs of this proceeding should not be imposed on Respondent.

SIGNED May 3, 2010.

  
STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS