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

BEFORE THE TEXAS BOARD OF NURSING

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|---|---|---|
| In the Matter of | § | AGREED |
| Vocational Nurse License Number 201561 | § | |
| issued to MERRICK RAYMOND HUTCHISON | § | ORDER |

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MERRICK RAYMOND HUTCHISON, Vocational Nurse License Number 201561, 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 proceedings, notice and hearing, and agreed to the entry of this Order.

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

## FINDINGS OF FACT

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

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

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

4. Respondent received a Certificate in Vocational Nursing from Concord Career Institute - Extended Health, Arlington, Texas on October 9, 2005. Respondent was licensed to practice vocational nursing in the State of Texas on November 8, 2005.

5. Respondent's employment history includes:

| | | |
|---|---|---|
| 11/2005 - 06/2010 | Unknown | |
| 07/2010 - 07/2012 | LVN | Huguley Memorial Medical Center<br>Burleson, Texas |
| 08/2012 - Present | Unknown | |

6. On or about November 9, 2010, Respondent was issued the sanction of REPRIMAND WITH STIPULATIONS through an Agreed Order issued by the Board. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated November 9, 2010, is attached and incorporated, by reference, as part of this Order.

7. At the time of the initial incident, Respondent was employed as a Licensed Vocational Nurse with Huguley Memorial Medical Center, Burleson, Texas, and had been in this position for approximately two (2) years.

8. On or about July 22, 2012, while employed with Huguley Medical Center, Burleson, Texas, Respondent lacked fitness to safely practice nursing in that he was drowsy, observed falling asleep while standing up performing a treatment on a patient, and unable to discern who his assigned patients were. Respondent was escorted to the emergency room for a drug screen for reasonable suspicion/cause, and he had difficulty writing the information required on the consent form. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

9. On or about July 22, 2012, while employed with Huguley Medical Center, Burleson, Texas, Respondent engaged in the intemperate use of Morphine and Marijuana in that he produced a specimen for a for cause drug screen that resulted positive for Morphine and Marijuana. Unlawful possession of Morphine and Marijuana is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Morphine and Marijuana by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.

10. On or about September 25, 2012, while employed with Reaction Medical, Inc. and on assignment at Baylor Surgical Hospital at Fort Worth, Texas, Respondent was observed falling asleep at a patient's bedside while he was attempting to connect the tubing to the cell saver. Respondent's condition could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.

11. In response to Findings of Fact Numbers Eight (8) through Ten (10), Respondent admits that he was tired. Respondent states he was at his barber shop and several people began to smoke marijuana. Respondent adds that he was diagnosed with sickle cell disease and the disease is controlled with pain medication which is prescribed by his treating physician. Respondent states he closed his eyes at times in the breakroom but never fell asleep at the patient's bedside.

12. Formal Charges were filed on August 6, 2013.

13. Charges were mailed to Respondent on August 6, 2013.

14. Respondent, by his/her signature to this Order, expresses his/her desire to voluntarily surrender his/her license(s) to practice nursing in the State of Texas.

15. The Board policy implementing Rule 213.29 in effect on the date of this Agreed Order provides discretion by the Executive Director for consideration of conditional reinstatement after proof of twelve (12) consecutive months of abstinence from alcohol and drugs followed by licensure limitations/stipulations and/or peer assistance program participation.

16. 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(s) of 22 TEX. ADMIN. CODE §217.12(4), (5), (10)(A), (10)(D) & (11)(B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9), (10) & (12), Texas Occupations Code, to take disciplinary action against , License Number 201561, heretofore issued to MERRICK RAYMOND HUTCHISON, including revocation of Respondent's license(s) to practice nursing in the State of Texas.

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

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

7. Any subsequent reinstatement of this license will be controlled by Section 301.453(d), Texas Occupations Code, and 22 TEX. ADMIN. CODE §213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

## ORDER

NOW, THEREFORE, IT IS AGREED and ORDERED that the VOLUNTARY SURRENDER of Vocational Nurse License Number 201561, heretofore issued to MERRICK RAYMOND HUTCHISON, to practice nursing in the State of Texas, is accepted by 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 "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 surrendered.

2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order; and, RESPONDENT has obtained objective, verifiable proof of twelve (12) consecutive months of sobriety immediately preceding the petition.

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 nurse licensure compact 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 violation(s) 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 becomes final when accepted by the Executive Director at which time the terms of this Order become effective and a copy will be mailed to me.

Signed this 10 day of MARCH, 2014.

MERRICK RAYMOND HUTCHISON, Respondent

Sworn to and subscribed before me this ____ day of _____, 20____.

SEAL

_____

Notary Public in and for the State of _____

WHEREFORE, PREMISES CONSIDERED, the Executive Director on behalf of the Texas Board of Nursing does hereby accept the voluntary surrender of Vocational Nurse License Number 201561, previously issued to MERRICK RAYMOND HUTCHISON.

Effective this 11th day of March, 2014.

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

BEFORE THE TEXAS BOARD OF NURSING

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|---|---|---|
| In the Matter of Vocational Nurse | § | |
| License Number 201561 | § | AGREED |
| issued to MERRICK RAYMOND HUTCHISON | § | ORDER |

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MERRICK RAYMOND HUTCHISON, Vocational Nurse License Number 201561, 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 representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on February 17, 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.

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

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

4. Respondent received a Certificate in Vocational Nursing from Concord Career Institute - Extended Health, Arlington, Texas on October 9, 2005. Respondent was licensed to practice vocational nursing in the State of Texas on November 8, 2005.

5. Respondent's vocational nursing history includes:

| | | |
|---|---|---|
| 10/05 - 9/06 | GVN/Staff LVN | Universal Health Services<br>Fort Worth, Texas |

Respondent's vocational nursing history continued:

| | | |
|---|---|---|
| 9/06 - 12/07 | Staff LVN | Christian Care Home Health<br>Fort Worth, Texas |
| 1/08 - present | Unknown | |

6. At the time of the initial incident in Finding of Fact Number Seven (7), Respondent was employed as a Vocational Nurse with Christian Care Home Health, Fort Worth, Texas, and had been in this position for one (1) year and one (1) month.

7. On or about October 11, 2007, through December 11, 2007, while employed with Christian Care Home Health, Fort Worth, Texas, Respondent telephonically passed prescriptions for Hydrocodone at Glenview Pharmacy for Home Health Patient DW, in order to misappropriate Hydrocodone for his own personal use. Respondent's conduct defrauded Patient DW of the cost of the medications.

8. In response to Finding of Fact Number Seven (7), Respondent states that without using good judgment, he took the Vicodin of one of his patients, Patient DW, while employed at Christian Care Home Health Center. Although there is no justification for the decision he made, Respondent states that he was in school getting ready for final exams, and had just had a recent death in the family. Additionally, Respondent reports that he was under a lot of stress and having headaches, which resulted in him having a minor sickle cell crisis. Respondent admits he took some of Patient DW's Vicodin to control the pain before it got worse because he was out of his prescription and was waiting for a refill. Respondent states that he is highly remorseful of his actions.

9. Formal Charges were filed mailed to Respondent on June 16, 2010.

10. On October 5, 2010, the Board was provided a letter from Mark B. Waldman, M.D., Respondent's physician, who stated that Respondent was being treated for chronic pain, due to his sickle cell disease. Dr. Waldman states that he prescribes Hydrocodone for these acute sickle cell pain crisis and asserts states that he has never had any concerns about Respondent abusing or misusing the Hydrocodone that he prescribes for him.

## 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), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(6)(G), (8) & (10)(E).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Vocational License Number 201561, heretofore issued to MERRICK RAYMOND HUTCHISON, 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 REPRIMAND 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 privilege, 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 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.

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

(2) RESPONDENT SHALL, 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.*

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) YEARS 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 VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY

TO THIS PROBATIONARY PERIOD:

(3) RESPONDENT SHALL notify each present employer in nursing of this Order of the Board and the probationary 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 probationary 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.

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

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

(7) 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.

(8) 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.

(19) 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.

(10) 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 a 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 two (2) years of employment as a nurse.

(11) 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.**

(12) 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 stipulation 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 is the sole method accepted by the Board.

Specimens shall be screened for at least the following substances:

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|---|---|
| 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 stipulation 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 stipulation 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 multistate licensure privileges, if any, to practice nursing in the State of Texas.

(13) 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.

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 and RESPONDENT shall be eligible for 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. 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 19th day of October, 2010.

MERRICK RAYMOND HUTCHISON, Respondent

Sworn to and subscribed before me this 19th day of October, 2010.

SEAL

JAIME ENRIQUEZ
Notary Public, State of Texas
My Comm. Expires Jan. 20, 2013

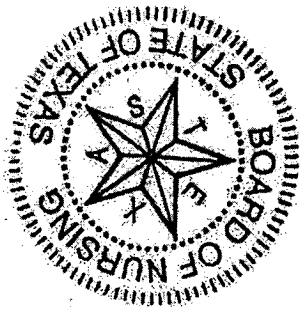
Notary Public in and for the State of Texas

Approved as to form ~~and substance~~,

Nancy Roper Willson, Attorney for Respondent

Signed this 19th day of October, 2010

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 19th day of October, 2010, by MERRICK RAYMOND HUTCHISON, Vocational Nurse License Number 201561, and said Order is final.




Effective this9th day of November, 2010.

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