BEFORE THE TEXAS BOARD OF NURSING

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| In the Matter of Vocational Nurse | § | AGREED |
| License Number 157894 | § | |
| issued to MARIE MARGARET FOLEY | § | ORDER |

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

On this day the Texas Board of Nursing, hereinafter referred to as the B considered the matter of MARIE MARGARET FOLEY, Vocational Nurse License Number 157 hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(8), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on June 18, 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 Houston Community College, Houston, Texas on December 15, 1995. Respondent was licensed to practice vocational nursing in the State of Texas on July 2, 1996.

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

6. On or about December 1, 2009, Respondent was issued an Order by the Commonwealth of Virginia Board of Nursing wherein Respondent's multistate compact licensure privilege associated with her license to practice vocational nursing in the State of Texas was issued a Reprimand and Monetary Penalty for failing to respond appropriately to an emergent situation in which Resident "A", who choked on a banana and died. More specifically, Respondent did not direct anyone to perform a finger sweep of the resident's mouth or to call 911, nor did Respondent attempt a finger sweep of the resident's mouth or call 911. A copy of the Virginia Board of Nursing Board Order No. 0029000019 dated December 1, 2009, Findings of Fact and Conclusions of Law is attached and incorporated, by reference, as part of this Order.

7. Respondent states she was called to the Resident Room and checked for a pulse with no pulse obtained. Respondent states the resident was purple in color and had expired and that she ran to get the oxygen tank and BIP machine. Respondent states she asked one of the CNA's to call for help and returned to the room to apply oxygen with no pulse or BIP obtained at the time.

8. Charges were filed on April 14, 2010.

9. Charges were mailed to Respondent on April 15, 2010.

## 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)(8), Texas Occupations Code.

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 157894, heretofore issued to MARIE MARGARET FOLEY, including revocation of Respondent's license to practice vocational nursing in the State of Texas.

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## 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 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, 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.

IT IS FURTHER AGREED that:

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

(2) RESPONDENT SHALL, within sixty (60) days of entry of this Order successfully complete a course in Basic Cardiopulmonary Life Support for Healthcare Providers. RESPONDENT SHALL obtain Board approval of the course and instructor 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 course shall be a minimum of eight (8) contact hours in length. The course's content shall include: Adult, Infant, and Child 1- and 2-Rescuer CPR; Adult, Infant, and Child Foreign Body Airway Obstruction for both responsive and unresponsive victims; and Adult Automated External Defibrillation. In order to receive credit for completion of this workshop, RESPONDENT SHALL obtain the Verification of Course Completion form from the Board's website, http://www.bon.state.tx.us/disciplinaryaction/pdfs/i17.pdf, and SHALL SUBMIT the Verification of Course Completion form to the Board's office, to the attention of Monitoring, after having the form completed and signed by the course instructor. RESPONDENT SHALL also submit a front and back copy of the course completion card along with the Verification of Course Completion form. 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.

(3) 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.*

**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:**

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

(5) 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.

(6) 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 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 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 waive representation by counsel. 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 vocational nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 1st day of July, 2010.

MARIE MARGARET FOLEY

MARIE MARGARET FOLEY, Respondent

Sworn to and subscribed before me this 1 day of ~~June~~ July, 2010.

SEAL

Judith R McDill

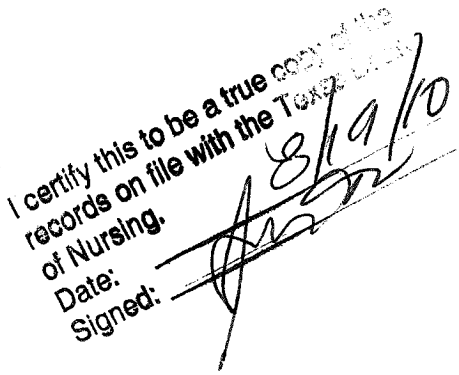
Notary Public in and for the State of Texas

JUDITH R. McDILL
Notary Public, State of Texas
My commission expires
06-12-2012

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 1st day of July, 2010, by MARIE MARGARET FOLEY, Vocational Nurse License Number 157894, and said Order is final.

Effective this 17th day of August, 2010.

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



VIRGINIA:

BEFORE THE BOARD OF NURSING

IN RE: MARIE FOLEY, L.P.N. 0029000019

## ORDER

In accordance with §§ 2.2-4019, 2.2-4021 and 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), an informal conference was conducted on behalf of the Board of Nursing ("Board") on September 30, 2009, in Henrico County, Virginia. Marie Foley, L.P.N., was not present nor was she represented by legal counsel. Jane Elliott, R.N., Ph.D., serving as Agency Subordinate for the Board, submitted a Recommended Decision for consideration.

On November 18, 2009, a quorum of the Board met to receive and act upon the Recommended Decision of the Agency Subordinate. Ms. Foley was not present nor was she represented by legal counsel.

Based upon its review of the Recommended Decision of the Agency Subordinate, the Board makes the following Findings of Fact and Conclusions of Law and issues the following Order.

## FINDINGS OF FACT

1. Marie Foley, L.P.N., was issued a license (PN 157894) to practice as a licensed vocational nurse in the state of Texas on July 2, 1996. On March 14, 2007, she was hired as a licensed practical nurse at Blue Ridge Nursing Center, Stuart, Virginia, at which point she held a valid, active compact license in Texas with multi-state privileges to practice. In May, 2007, Ms. Foley submitted an application for licensure by endorsement in the Commonwealth of Virginia, and listed Texas as her primary state of residence. By letter dated May 30, 2007, the Virginia Board of Nursing ("Board") advised Ms. Foley that her application for licensure could not be processed due to her multi-state Texas compact license, which authorized her to practice in all 17 compact states, including Virginia. According to information provided by Ms. Foley, in 2007, Ms. Foley notified the Texas Board of

Nursing ("Texas Board") that "West Virginia" was her primary state of residence. When Ms. Foley renewed her Texas license in September of 2008, her Texas compact license was changed to single state because she had listed West Virginia, which is a non-compact state, as her primary state of residence. On March 5, 2009, Ms. Foley notified the Texas Board that Virginia was her primary state of residence, which then changed her Texas licensure status to "invalid." However, on May 22, 2009, Ms. Foley presumably advised the Texas Board that Texas was her primary state of residence as she was again issued a valid, active compact license in Texas with multi-state privileges to practice.

2. By letter dated September 4, 2009, the Board sent a Notice of Informal Conference ("Notice") to Ms. Foley notifying her that an informal conference would be held on September 30, 2009. The Notice was sent by overnight mail to 2934 Wayside Road, Stuart, Virginia 24171, the address of record on file with the Board of Nursing. Information obtained from the United States Postal Service website indicated that the letter was delivered to Ms. Foley's address of record on September 8, 2009. The Agency Subordinate concluded that adequate notice was provided to Ms. Foley and the informal conference proceeded in her absence.

3. On January 7, 2009, during the course of her employment with Blue Ridge Nursing Center, Stuart, Virginia, Ms. Foley failed to respond appropriately to an emergent situation in which Resident A choked on a banana and died. More specifically, she did not direct anyone to perform a finger sweep of the resident's mouth or to call 911, nor did she, herself, attempt a finger sweep of the resident's mouth or call 911. As a result, Ms. Foley's employment was terminated.

4. When interviewed by an investigator with Virginia Department of Health Professions on February 25, 2009, Ms. Foley stated that the resident was a DNR status and that the resident had already expired when she entered the room. However, according to the Director of Nursing, when Ms. Foley was questioned regarding her failure to do a finger sweep of the resident's mouth, or to call 911,

she stated that she "didn't think of it, and he was a DNR."

5. Because of Ms. Foley's errors in making application for licensure in Virginia and Texas, between September 28, 2008, and January 7, 2009, during the course of her employment with Blue Ridge Nursing Center, Ms. Foley practiced as a practical nurse without a current, valid license or multi-state licensure privilege to practice nursing in the Commonwealth of Virginia.

## CONCLUSIONS OF LAW

1. Finding of Fact No. 3 constitutes a violation of § 54.1-3007(2), (5), and (8) of the Code and 18 VAC 90-20-300(A)(2)(f) of the Regulations Governing the Practice of Nursing.

2. Finding of Fact No. 5 constitutes a violation of § 54.1-3007(3) and 54.1-3008(A)(2) of the Code.

## ORDER

WHEREFORE, it is hereby ORDERED as follows:

1. Marie Foley, L.P.N., is hereby REPRIMANDED.

2. Ms. Foley shall pay a MONETARY PENALTY of $300.00 to the Board within 60 days of the entry of this Order.

3. Ms. Foley shall maintain a course of conduct in her capacity as a practical nurse commensurate with the requirements of § 54.1-3000 *et seq.* of the Code and the Board of Nursing Regulations.

Since Ms. Foley failed to appear at the informal conference, this Order shall be considered final. Ms. Foley has the right to appeal this Order directly to the appropriate Virginia circuit court. As provided by Rule 2A:2 of the Supreme Court of Virginia, Ms. Foley has thirty (30) days from the date of service (the date she actually received this decision or the date it was mailed to her, whichever occurred first) within which to appeal this decision by filing a Notice of Appeal with Jay P. Douglas, R.N., M.S.M.,

C.S.A.C., Executive Director, Board of Nursing, at Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, Virginia 23233. In the event that this decision is served by mail, three (3) days are added to that period.

Pursuant to § 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

FOR THE BOARD

Gloria Mitchell

for Jay P. Douglas, R.N., M.S.M., C.S.A.C.
Executive Director
Board of Nursing

Entered: December 1, 2009

Certified True Copy
By dgraham
Virginia Board of Nursing