



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.  
*Amanda J. Ellis*  
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse License Number 630506           §     AGREED  
and Vocational Nurse License Number 120734                   §       
issued to JANICE G. BERRY   §     ORDER

An investigation by the Texas Board of Nursing, hereinafter referred to as the Board, produced evidence indicating that JANICE G. BERRY, hereinafter referred to as Respondent, Registered Nurse License Number 630506, and Vocational Nurse License Number 120734, may have violated Section 301.452(b)(9), (10) & (12), Texas Occupations Code.

An informal conference was held on June 22, 2010, at the office of the Texas Board of Nursing, in accordance with Section 301.464 of the Texas Occupations Code.

Respondent appeared in person. Respondent was represented by Amanda J. Ellis, Attorney at Law. In attendance were Mary Beth Thomas, Ph.D., RN, Director, Nursing Division, Executive Director's Designee; Kyle Hensley, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Dominique Mackey, Investigator; and Paul Longoria, Investigator.

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 notice and hearing, and consented to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas. 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 Trinity Valley Community College, Kaufman, Texas on August 14, 1987. Respondent was licensed to practice vocational nursing in the State of Texas on May 26, 1988. Respondent received an Associate

Degree in Nursing from Trinity Valley Community College, Kaufman, Texas on May 1, 1996. Respondent was licensed to practice professional nursing in the State of Texas on July 2, 1996.

5. Respondent's vocational and professional nursing employment history includes:

|                 |     |   |
|-----------------|-----|---|
| 05/88 - 06/96   | LVN | East Texas Medical Center<br>Athens, Texas  |
| 07/96 - 01/01   | RN  | East Texas Medical Center<br>Athens, Texas  |
| 09/96 - 01/05   | RN  | South Place Nursing Center<br>Athens, Texas |
| 01/05 - 05/05   | RN  | Bethany Place Nursing<br>Athens, Texas      |
| 04/08 - Present | RN  | Exceptional Staffing<br>Tyler, Texas        |
| 06/09 - 06/10   | RN  | Legacy Hospice<br>Tyler, Texas              |

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with East Texas Medical Center, Athens, Texas, and had been in this position for two (2) years and two (2) months.
7. On or about July 10, 2007, while employed with East Texas Medical Center, Athens, Texas, Respondent lacked fitness to practice professional nursing in that she was observed exhibiting characteristics of being impaired including, but not limited to; slurred speech, disorientation, blood shot and heavy eyes, and delayed response to questions. Respondent's condition could have affected her ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected her ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
8. On or about July 10, 2007, while employed with East Texas Medical Center, Athens, Texas, Respondent engaged in the intemperate use of Hydrocodone in that she submitted a specimen for a drug screen which resulted positive for Hydrocodone. The use of Hydrocodone by a 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.

9. Respondent denies the conduct outlined in Finding of Fact Number Seven (7). She states that on July 9, 2007, she was cleaning her house and got a household spray (Bengal) in her eyes which caused them to burn and become red. She states that on the same day she was called by the Assistant Area Coordinator and asked to change from working the next day (10th) to Friday the 13th. Respondent awoke the next day and started taking her routine medication which includes 2 tabs of Neurontin 600mg and Prozac 40mg. She then called the house supervisor to confirm that she was off that day. Respondent was told that she was still on the schedule. After arriving at work it was decided that she could work for awhile. Respondent started drinking coffee and working while she awaited the decision to allow her to return home. She states that at no time did she feel impaired or unable to work. Respondent questions why the Area Coordinator and Assistant Coordinator would have allowed her to continue working if she did exhibit the characteristics alleged.

Regarding the conduct outlined in Finding of Fact Number Eight (8), Respondent states that her drug screen was positive as it was on the date of her rehire in May 2004. She states that she takes Norco 10/325mg for pain due to diagnosis of Reflex Sympathetic Dystrophy and chronic intractable back and leg pain. She states that she does not use any medication that would impair her while at work or would jeopardize any of her patients. Respondent submitted documents from Texas Back Institute attesting to her diagnosis and need to take her medications as directed and also at work for her condition. Respondent also submitted an assessment form as part of her referral to the Texas Peer Assistance Program for Nurses (TPAPN). The assessment was done by Tamera McGaugh, LCDC II and indicates that Respondent has no substance abuse issues which was confirmed by SASSI, MAST and DAST. Also indicates that Respondent has a prescription for opioid drugs for pain.

Respondent submitted a letter of supporter from Linda Ingham, RN. Ms. Ingham is the Director of Nurses for Athens Health & Rehab, Athens, Texas. Ms. Ingham states that she has known Respondent both personally and professionally for more than ten (10) years and has worked with her as a co-worker and as her supervisor in more than one health care facility. Ms. Ingham states that she has found Respondent to be dependable, with good nursing judgement and skills. Ms. Ingham states that she would consider Respondent for a nursing position at her facility if she were to apply.

10. 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 301.451-301.455, 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) & (12), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(5) & (10)(A).
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 630506 and Vocational Nurse License Number 120734, heretofore issued to JANICE G. BERRY, including revocation of Respondent's licenses to practice professional and vocational nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that RESPONDENT SHALL receive the sanction of a WARNING WITH STIPULATIONS, and RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE § 211.1 *et seq.* and this Order.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's 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(s) are 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 not 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 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 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 A REGISTERED NURSE (RN) OR VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD.**

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

(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) RESPONDENT SHALL CAUSE each employer to immediately submit any and all incident, counseling, variance, unusual occurrence, and medication or other error reports involving RESPONDENT, as well as documentation of any internal investigations regarding action by RESPONDENT, to the attention of Monitoring at the Board's office.

(6) 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 one year of employment as a nurse.

(7) 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.**

(8) RESPONDENT SHALL submit to random periodic screens for controlled substances, tramadol hydrochloride (Ultram), and alcohol. Random screens shall be performed at least once per month. 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:

|                 |               |
|-----------------|---------------|
| 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.

(9) RESPONDENT SHALL participate in pain management therapy with a Board approved Medical Doctor or Doctor of Osteopathy, licensed by the Texas Medical Board, and certified as a Diplomat with the American Board of Pain Medicine. RESPONDENT SHALL CAUSE the physician to submit written reports to the Board, which shall include, at a minimum, the clinical indications and rationale for the chronic use of controlled substances, RESPONDENT's progress and compliance with pain management therapy, and a prognosis as to RESPONDENT's ability to safely practice nursing in a direct patient care setting. Such reports are to be furnished each and every month for three (3) months. If therapy is recommended for beyond three (3) months, the reports shall then be required at the end of each three (3) month period for the duration of the stipulation period, or until RESPONDENT no longer requires the use of controlled substances.



IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT shall be eligible for nurse licensure compact privileges, if any.

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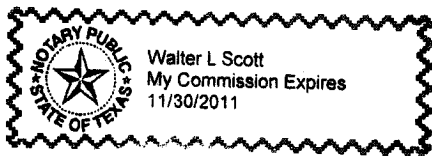
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RESPONDENT'S CERTIFICATION

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 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(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 12<sup>th</sup> day of July, 2010.

Janice G. Berry  
JANICE G. BERRY, Respondent



Sworn to and subscribed before me this 12<sup>th</sup> day of July, 2010.

SEAL

Walter L. Scott Commission Expires 11-30-2011

Notary Public in and for the State of Texas

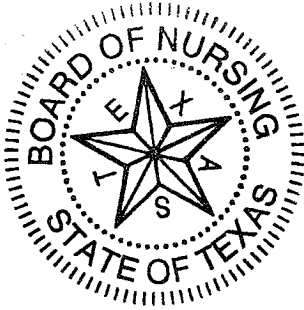
Approved as to form and substance.

Amanda J. Ellis  
AMANDA J. ELLIS, Attorney for Respondent

Signed this 15<sup>th</sup> day of July, 2010.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 12th day of July, 20 10, by JANICE G. BERRY, Registered Nurse License Number 630506, and Vocational Nurse License Number 120734, and said Order is final.

Effective this 17th day of August, 20 10.



*Katherine A. Thomas*

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