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Patricia P. Thomas
Executive Director of the Board

DOCKET NUMBER 507-09-3315

IN THE MATTER OF

PERMANENT CERTIFICATE

NUMBER 611907 ISSUED TO

KAREN L. DAVIS

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: KAREN L. DAVIS
8314 TOWN CREEK DRIVE
HOUSTON, TX 77095

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 23-24, 2009, the Board considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; and (2) Staff's recommendations that the Board adopt the PFD regarding the Professional Nursing license of Karen L. Davis without changes.

The Board of Nursing finds that after proper and timely notice was given, the above-styled 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.

The Board of Nursing, after review and due consideration of the PFD and Staff's recommendations, adopts all of the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD, as if fully set out and separately stated herein. Further, 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 611907, previously issued to KAREN L. DAVIS, to practice professional nursing in the State of Texas be, and the same is hereby, SUSPENDED, with said suspension ENFORCED until Respondent undergoes a psychological evaluation in which the evaluator deems Respondent safe to practice professional nursing. The evaluation shall be performed by a Board certified psychiatrist approved by the Board and in a manner approved by the Board. RESPONDENT SHALL CAUSE the performing psychiatrist or clinical psychologist to send a report of the evaluation to the Board's office. The report shall include:

1. a description of the instruments used for the evaluation and the results of the evaluation;
2. a statement as to the RESPONDENT'S fitness to safely practice professional nursing; and
3. diagnosis and recommendations for therapy or other follow-up, if necessary.

IT IS FURTHER ORDERED that Permanent Certificate Number 611907 previously issued to KAREN L. DAVIS, upon receipt of this Order, be immediately delivered to the office of the Board of Nursing.

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable to Respondent's multistate privilege, if any, to practice professional nursing in compact states.

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.

IT IS FURTHER AGREED, upon receipt of the report from the psychiatrist or clinical psychologist in which the evaluator deems the Respondent safe to practice professional nursing, the SUSPENSION will be stayed, and RESPONDENT will be placed on probation for two(2) years with the following terms of probation:

(1) RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Revised Civil Statutes of Texas as amended, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and be issued a license to practice professional nursing in the State of Texas with the appropriate notation.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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) contact hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's

Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to the Office of the Board to verify RESPONDENT's successful completion of the course. This course shall be taken in addition to any other courses stipulated in this Order, if any, and in addition to any continuing education requirements the Board has for relicensure. *Board-approved courses may be found at the following Board website address:* <http://www.bon.state.tx.us/disciplinaryaction/stipscourses.html>.

(4) RESPONDENT SHALL pay a monetary fine in the amount of \$250.00. RESPONDENT SHALL pay this fine within 45 days of the suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

ONCE THE SUSPENSION IS STAYED, IT IS FURTHER ORDERED, SHOULD RESPONDENT PRACTICE AS A LICENSED REGISTERED 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 LICENSED REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS
PROBATIONARY PERIOD:**

(5) RESPONDENT SHALL notify all future employers in professional nursing of this Order of the Board and the probation conditions on RESPONDENT's license. RESPONDENT SHALL present a complete copy of this Order and all Proposals for Decision issued by the Administrative Law Judge, if any, to each future employer prior to accepting an offer of employment. 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 professional nurse.

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

(7) For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse who is on the premises. The supervising RN 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 RN 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.

(8) RESPONDENT SHALL participate in therapy with a "professional counselor" possessing credentials approved by the Board. RESPONDENT SHALL CAUSE the therapist to submit written reports, on forms provided by the Board, as to the RESPONDENT's progress in therapy, rehabilitation and capability to safely practice nursing. The report must indicate whether or not the RESPONDENT's stability is sufficient to provide direct patient care safely. 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 probation period, or until RESPONDENT is dismissed from therapy.

IT IS FURTHER 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.

THE TEXAS BOARD OF NURSING

Entered and effective this 24th day of July 2009.

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

Attachment: Proposal for Decision; Docket No. 507-09-3315 (May 29, 2009).

SOAH DOCKET NO. 507-09-3315

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NUMBER 611907 ISSUED TO	§	
	§	
KAREN L. DAVIS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) seeks to discipline Karen L. Davis (Respondent) for violating provisions of TEX. OCC. CODE ANN. ch. 301 and the Board's rules. Despite being sent proper notice, Respondent did not appear nor was she represented at the hearing. Based on Respondent's failure to appear, Staff's allegations were accepted as true, establishing the violations. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's license should be suspended, along with the imposition of additional sanctions as hereinafter set forth.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened May 19, 2009, before ALJ Michael J. Borkland in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by R. Kyle Hensley, Assistant General Counsel, who moved for default based on Respondent's failure to appear.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law.

II. RECOMMENDATION

Staff presented its expert witness, Katherine A. Thomas, the Board's Executive Director. Ms. Thomas has been in her current position for 14 years. She is familiar with the Nursing Practice Act, the Board Rules and policies, and prior disciplinary actions brought by Staff. Ms. Thomas testified that Respondent's action of falsifying her physician's signature in order to return to work placed patients at risk. Ms. Thomas stated that Respondent suffered from extreme sleep deprivation and psychosis and was not fit because her condition could have impacted the level of competency and judgment required for practicing professional nursing. According to Ms. Thomas, Respondent's license should be suspended pending a psychological evaluation finding that she is ready to return to the practice of nursing. Additionally, she believes Respondent should be fined \$250, required to take a jurisprudence course, monitored for two years with direct supervision for the first year and indirect supervision for the second year, submit to the care of a mental health provider for as long as necessary, and to disclose the Board's order to all potential employers.

Based upon following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.501, the ALJ granted Staff's motion for default, deems Staff's allegations to be true, and recommends that Respondent be sanctioned in accordance with Ms. Thomas' recommendations.

III. FINDINGS OF FACT

1. Karen L. Davis (Respondent) is a Registered Nurse licensed by the State of Texas, holding license number 611907.
2. Staff of the Texas Board of Nursing (Staff/Board) issued its Formal Charges against Respondent on October 2, 2008.
3. On March 30, 2009, Staff mailed its Notice of Hearing and the charges to Respondent by certified mail, return receipt requested, addressed to 8314 Town Creek Drive, Houston, Texas 77095, Respondent's address of record on file with the Board. According to United

States Postal Service Form 3811, Domestic Return Receipt, Respondent received the notice on April 2, 2009.

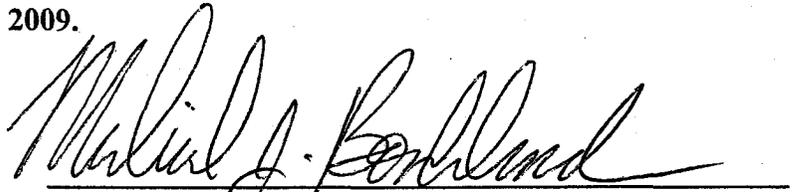
4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
5. The notice of hearing contained the following language in capital letters in 12-point boldface type: "Failure to appear at the hearing in person or by legal representative, regardless of whether an appearance has been entered, will result in the allegations contained in the formal charges being admitted as true and the proposed recommendation of staff shall be granted by default."
6. Respondent did not appear and was not represented at the hearing.
7. On January 11, 2008, while on a medical leave of absence from Matria Healthcare, Inc., Respondent fabricated a letter indicating that her physician, Dr. Carlotta Hillert, had cleared her to perform duties as a patient educator, and submitted the letter to her employer, Matria Healthcare, Inc.
8. Respondent's conduct could have deceived patients, their families, fellow caregivers, and the public into believing that Respondent was fit to return to the practice of nursing.

IV. CONCLUSIONS OF LAW

1. The Texas Board of Nursing (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (Act), TEX. OCC. CODE ANN. chs. 301.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice was provided to Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. The Board is authorized to take disciplinary action if a person has committed an act listed in TEX. OCC. CODE ANN. § 301.452(b), pursuant to TEX. OCC. CODE ANN. § 301.453.
5. The allegations stated in Findings of Fact Nos. 7 and 8 are deemed admitted, pursuant to 1 TAC § 155.501.

6. Based on the above Findings of Fact, Respondent violated TEX. OCC. CODE ANN. § 301.452(b)(10).
7. Based on above Findings of Fact and Conclusions of Law, the Board should:
 - a. Suspend license number 611907 held by Respondent pending a psychological evaluation finding that she is ready to return to the practice of nursing;
 - b. Assess Respondent an administrative penalty in the amount of \$250;
 - c. Require Respondent to take a jurisprudence course;
 - d. Monitor Respondent's practice for two years with direct supervision for the first year and indirect supervision for the second year;
 - e. Require Respondent to submit to the care of a mental health provider for as long as necessary; and
 - f. Require Respondent to disclose the Board's final order to all potential employers.

SIGNED May 29, 2009.


MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS