BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of	§	AGREED
Registered Nurse License Number 527595	§	
issued to DIANA KAY THORNTON	§	ORDER

An investigation by the Texas Board of Nursing, hereinafter referred to as the Boa produced evidence indicating that DIANA KAY THORNTON, hereinafter referred to Respondent, Registered Nurse License Number 527595, may have violated Section 301.452(b)(13), Texas Occupations Code.

An informal conference was held on October 2, 2007, 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 Oscar San Miguel and Louis Leichter, Attorneys at Law. In attendance were Mary Beth Thomas, PhD, RN, Director, Professional Nursing, Executive Director's Designee; Rachel Gomez, LVN, Board Member; Victoria Cox, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Mike Abul-Saud, RN, Investigator; and J. L. Skylar Caddell, RN,C, Lead Investigator.

A mediated settlement conference was held at the Texas State Office of Administrative Hearings, Austin, Texas, on October 10,2008. The parties were present and represented by their respective attorneys: for the Board, John F. Legris, Assistant General Counsel; and for Respondent, Oscar San Miguel, Attorney at Law. The parties have freely and voluntarily entered into this Agreed Order.

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 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.

4. Respondent received an Associate Degree in Nursing from Iowa Western Community College, Council Bluffs, Iowa, in June 1985. Respondent was licensed to practice practical nursing in the State of Iowa on November 1, 1984; was licensed to practice professional nursing in the State of Iowa on August 1, 1985; and was licensed to practice professional nursing in the State of Texas on September 16, 1985.

5. Respondent's nursing employment history includes:

11/1984 - 08/1985	Unknown	
09/1985 - 06/1987	Charge Nurse, Psych Unit	Fannin Pavilion - Columbia Beaumont, Texas
07/1987 - 07/1988	Staff Nurse	Baptist Hospital Beaumont, Texas
07/1987 - 07/1988	Charge Nurse, Psych Unit, Part Time	Fannin Pavilion - Columbia Beaumont, Texas
09/1988 - 09/1999	Charge Nurse, Psych Unit	Fannin Pavilion - Columbia Beaumont, Texas
10/1999 - 03/2000	Unknown	
04/2000 - 08/2001	Charge Nurse	West Oaks Psychiatric Hospital Houston, Texas
12/2001 - Present	Correctional Facility Staff Nurse	The University of Texas Medical Branch, Correctional Managed Care (UTMB-CMC), Galveston, Texas assigned to Texas Department of Criminal Justice (TDCJ), Stiles Unit, Beaumont, Texas

6. At the time of the incident in Finding of Fact Number Seven (7), Respondent was employed as a Correctional Facility Staff Nurse with UTMB-CMC, Galveston, Texas, assigned to TDCJ Stiles Unit, Beaumont, Texas, had been in this position for four (4) years and ten (10) months, and was on-call for the TDCJ Plane State Jail, Dayton, Texas.

7. On or about October 25, 2006, while employed as a Correctional Facility Staff Nurse with UTMB-CMC, Galveston, Texas, assigned to TDCJ Stiles Unit, Beaumont, Texas, and on-call for the TDCJ Plane State Jail, Dayton, Texas, Respondent failed to obtain and document sufficient object assessment information about the presenting signs and symptoms of Inmate Number 1358391 when she received a phone call from a correctional officer who reported that the inmate indicated she might be having a stroke. The inmate relayed that she felt the same way as before, when she supposedly had a stroke. Because Respondent was sixty (60) miles away, she was not able to personally observe the inmate or take the inmate's vital signs, and had to rely on information passed to her through the correctional officer. The most recent set of vital signs available in the medical record were from six (6) days earlier, but there was no staff at the facility with the inmate who could have taken a current set of vital signs or performed a hands-on, face-to-face assessment of the inmate. The correctional officer communicated that the inmate did not seem emergent, and Respondent concurred that the inmate could be seen by a provider the next morning. By the next morning, the inmate had developed generalized weakness, confusion, and an inability to report facts, and required emergent transfer to an acute care facility, where she was admitted and treated for Hypertensive Emergency and Altered Level of Consciousness. It was determined that the inmate was suffering from Cryptococcal Meningitis, and the inmate succumbed three (3) days after admission.

8. In response to the incident in Finding of Fact Number Seven (7), Respondent states that she documented, after reviewing the medical record, that the inmate had been seen by a provider several days prior for similar complaints and had been sent back to her cell. According to Respondent, she was on-call for a total of five (5) facilities, in addition to being on duty as the only nurse for the Stiles Unit, and as a result, there was no means by which she could travel to the Plane State Jail Unit in order to physically assess the inmate further. According to Respondent, because inmates typically answer "yes" to questions about any specific symptoms, she asked the inmate open-ended questions about her status, and when the inmate stated she was the same as earlier, Respondent asked the Lieutenant (non-medical staff) who was with the inmate "what he was seeing." According to the Respondent, the Lieutenant gave her every assurance that the inmate was not in need of emergent care. Respondent states she reviewed the inmate's medical record for risk factors and made a determination that the inmate's condition was not urgent and could wait; moreover, transporting the inmate to an acute care facility would have required the approval of the Utilization Review Department, which was discouraged due to cost factors. Respondent states further that she expressed concerns to nursing management about the telephone triage process at the time that it was implemented and that the process was discontinued three (3) months after the incident.

9. On or about Spring 2008, Respondent completed a course in "Care of the Emergent Patient," which was an eight (8) hour program.

10. The Board finds that Respondent's performance evaluations since the incident indicate that she consistently meets or exceeds expectations, that the patient outcome may not have been a result of Respondent's care, and that the systems issues and constraints identified above may have been influential.

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)(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.11(1)(B),(1)(D),(1)(P)&(3)(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 527595, heretofore issued to DIANA KAY THORNTON, including revocation of Respondent's license to practice professional 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 REMEDIAL EDUCATION, 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 licensure 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, Respondent may not work outside the State of Texas pursuant to a multistate licensure privilege without the written permission of the State of Texas and the Board of Nursing in the party state where Respondent wishes to work.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to DIANA KAY THORNTON, to the office of the Texas Board of Nursing within ten (10) days of the date of 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 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 Chemical Dependency, 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.*

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, complete a course in physical assessment. RESPONDENT SHALL obtain Board approval of the course 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 didactic portion of this course shall be a minimum of six (6) hours in length. RESPONDENT SHALL perform physical assessments on

live patients in a clinical setting for a minimum of twenty-four (24) hours. The clinical component SHALL focus on tasks of physical assessment only and shall be provided by the same Registered Nurse who provides the didactic portion of this course. To be approved, the course shall cover all systems of the body. Performing assessments on mock patients or mannequins WILL NOT be accepted. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. RESPONDENT SHALL successfully complete both the didactic and clinical portions of the course to satisfy this stipulation. RESPONDENT SHALL CAUSE the instructor 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, within one (1) year of entry of this Order, successfully complete a course in nursing documentation. 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. The course shall be a minimum of six (6) hours in length of classroom time. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. RESPONDENT SHALL cause the instructor to submit a Verification of Course Completion form, provided by the Board, to the Board's office 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.*

(5) 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://www.learningext.com/products/generalce/critical/ctabout.asp.*

IT IS FURTHER AGREED, that upon full compliance with the terms of this Order, RESPONDENT SHALL be issued an unencumbered license and multistate licensure privileges, if any, to practice professional 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 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 when this Order becomes final and the terms of this Order become effective, 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 professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 10th day of October, 2008.

Diana Kay Thornton

DIANA KAY THORNTON, Respondent

Sworn to and subscribed before me this 10th day of October, 2008.

SEAL

Rita F. McBride
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
FEBRUARY 14, 2010

Rita F. McBride

Notary Public in and for the State of Texas

Approved as to form and substance.

Oscar San Miguel, Attorney for Respondent

Signed this 10th day of October, 2008.

WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby ratify and adopt the Agreed Order that was signed on the 10th day of October, 2008, by DIANA KAY THORNTON, Registered Nurse License Number 527595, and said Order is final.

Effective this 20th day of October, 2008.

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