BEFORE THE TEXAS BOARD OF NURSING
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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

In the Matter of	§
Vocational Nurse License Number 126714 and	§
Registered Nurse License Number 558916	§
issued to DEBORAH LYNN KIRBY,	§
PETITIONER for Exception	§

ORDER GRANTING PETITIONER'S REQUEST FOR EXCEPTION

A public meeting of the Eligibility and Disciplinary Committee of the Board, hereinafter referred to as the Committee, was held on December 18, 2012, at 333 Guadalupe, Tower 3, Suite 460, Austin, Texas, to consider the Petition for Exception and supporting documents filed by DEBORAH LYNN KIRBY, hereinafter referred to as PETITIONER.

Petitioner appeared in person and was represented by Joe A. Flores, FNP, RN, Attorney at Law. In attendance were Beverly Nutall, LVN, Deborah Bell, CLU, ChFC; and Tamara Cowen, MSN, RN. Staff present were Katherine A. Thomas, MN, RN, FAAN, Executive Director; James W. Johnston, General Counsel; Anthony L. Diggs, Director, Enforcement Division; Earl E. Stearns, CFE, Supervising Investigator; Virginia Kidd, RN, Investigator, Molly Omelchuck, RN, Investigator; and Andrea Gonzalez, Legal Secretary.

After review and due consideration of the filed Petition, the Committee voted to GRANT the Petition for Exception.

IT IS THEREFORE ORDERED that:

(1) The Order previously issued to Petitioner on May 10, 2011, remains in full force and effect in its entirety with the sole exception that Stipulation Number Four (4) of that Order is hereby removed as a requirement of that Order and replaced with the following:

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

(2) PETITIONER SHALL be responsible for completing the remaining terms of the Order previously issued to Petitioner on May 10, 2011. A copy of the May 10, 2011, Order previously issued to Petitioner is attached and incorporated herein by reference as part of this Order.

Entered this 18th day of December, 2012.

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 Registered Nurse License Number 558916	§	AGREED
and Vocational Nurse License Number 126714	§	
issued to DEBORAH LYNN KIRBY	§	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 Boa considered the matter of DEBORAH LYNN KIRBY, Registered Nurse License Number 558 and Vocational Nurse License Number 126714, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Article 4528c, sec. 10(a)(9), TEX. REV. CIV. STAT. ANN.(eff. 09/01/1997), and Article 4525(b)(9), TEX. REV. CIV. STAT. ANN.(eff. 09/01/1997). Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on January 16, 2011, 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(s).

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 professional nursing in the State of Texas. Respondent holds a license to practice vocational nursing in the State of Texas, which is in delinquent status.

4. Respondent received a Certificate in Vocational Nursing from El Centro College, Dallas, Texas, on May 1, 1988, and an Associate Degree in Nursing from El Centro College, Dallas, Texas, on December 1, 1989. Respondent was licensed to practice vocational nursing in the State of Texas on December 7, 1989, and Respondent was licensed to practice professional nursing in the State of Texas on March 23, 1990.

5. Respondent's nursing employment history is unknown.

6. On or about October 26, 1983, Respondent entered a plea of Guilty and was convicted of DRIVING UNDER THE INFLUENCE LIQUOR, in Dallas County, Texas, under Cause No. MA8368409. As a result of the conviction, Respondent was sentenced to confinement for a period of thirty (30) days; however, the imposition of the sentence of confinement was suspended, and Respondent was placed on probation for a period of two (2) years. Additionally, Respondent was ordered to pay a fine and court costs.

7. On or about February 25, 1998, Respondent entered a plea of Nolo Contendere to THEFT PROP>=$50<$50 (a Class B Misdemeanor offense committed on September 12, 1997), in the County Criminal Court No. 5 of Dallas County, Texas, under Cause No. MB9738300F. As a result of the plea, the proceedings against Respondent were deferred without entering an adjudication of guilt and Respondent was placed on probation for a period of twelve (12) months. Additionally, Respondent was ordered to pay a fine and court costs. Respondent's probation was dismissed on March 2, 1999.

8. On or about June 23, 1999, Respondent entered a plea of Guilty and was convicted of DWI (an offense committed on January 29, 1999), in the County Criminal Court of Dallas County, Texas, under Cause No. MB9919810A. As a result of the conviction, Respondent was sentenced to confinement in the Dallas County Jail for a period of one hundred and forty (140) days; however, the imposition of the sentence of confinement was suspended, and Respondent was placed on probation for a period of twenty-four (24) months. On or about August 18, 2000, Respondent's probation granted under Cause No. MB9919810A was revoked and Respondent was sentenced to confinement in the Dallas County Jail for a period of seventy (70) days.

9. 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 of Article 4528c, sec. 10(a)(9), TEX REV. CIV. STAT. ANN.(eff. 09/01/1997), and Article 4525(b)(9), TEX. REV. CIV. STAT ANN.(eff. 09/01/1997).

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 558916 and

Vocational Nurse License Number 126714, heretofore issued to DEBORAH LYNN KIRBY, including revocation of Respondent's license(s) to practice 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) is/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 <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) 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.*

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(S) 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 REGISTERED NURSE (RN) OR VOCATIONAL NURSE (LVN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(2) 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.

(3) 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.

(4) RESPONDENT SHALL be supervised by a Registered 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.

(5) 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 (1) year of employment as a nurse.

(6) 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 a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.**

(7) 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. All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are 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(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

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

Signed this 9 day of April, 2011.

Deborah Lynn Kirby

DEBORAH LYNN KIRBY, Respondent

Sworn to and subscribed before me this 9 day of APRIL, 2011.

SEAL

CHERYL L. HARRIS
My Commission Expires
May 07, 2014

Cheryl Harris

Notary Public in and for the State of Texas

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 9th day of April, 2011, by DEBORAH LYNN KIRBY, Registered Nurse License Number 558916 and Vocational Nurse License Number 126714, and said Order is final.

Effective this 10th day of May, 2011.

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