IN THE MATTER OF PERMANENT VOCATIONAL NURSE LICENSE NUMBER 169171 ISSUED TO MELITZA GAYTAN	§ § § § § § §	BEFORE THE TEXAS BOARD OF NURSING ELIGIBILITY AND DISCIPLINARY COMMITTEE

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

ORDER OF THE BOARD

TO: MELITZA GAYTAN
934 D ST.
BROWNSVILLE, TX 78520

During open meeting held in Austin, Texas, on February 12, 2013, the Texas Board of Nursing Eligibility and Disciplinary Committee (hereinafter "Committee") heard the above-styled case, based on the failure of the Respondent to appear as required by 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with Texas Government Code § 2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Nursing Practice Act, Chapter 301 of the Texas Occupations Code, for retention of Respondent's license(s) to practice nursing in the State of Texas.

The Committee finds that the Formal Charges were properly initiated and filed in accordance with section 301.458, Texas Occupations Code.

The Committee finds that after proper and timely Notice regarding the violations alleged in the Formal Charges was given to Respondent in this matter, Respondent has failed to appear in accordance with 22 TEX. ADMIN. CODE Ch. 213.

The Committee finds that the Board is authorized to enter a default order pursuant to Texas Government Code § 2001.056.

The Committee, after review and due consideration, adopts the proposed findings of fact and conclusions of law as stated in the Formal Charges which are attached hereto and incorporated by

reference for all purposes and the Staff's recommended sanction of revocation by default. This Order will be properly served on all parties and all parties will be given an opportunity to file a motion for rehearing [22 TEX. ADMIN.CODE § 213.16(j)]. All parties have a right to judicial review of this Order.

All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Permanent Vocational Nurse License Number 169171, previously issued to MELITZA GAYTAN, to practice nursing in the State of Texas be, and the same is/are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

Entered this 12th day of February, 2013.

TEXAS BOARD OF NURSING

BY: Katherine A. Thomas

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

Attachment: Formal Charge filed July 18, 2012.

Re: Permanent Vocational Nurse License Number 169171
Issued to MELITZA GAYTAN
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2013, a true and correct copy of the foregoing DEFAULT ORDER was served and addressed to the following person(s), as follows:

Via USPS Certified Mail, Return Receipt Requested
MELITZA GAYTAN
934 D ST.
BROWNSVILLE, TX 78520

BY: Katherine A. Thomas

KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

In the Matter of Permanent License Number 169171, Issued to MELITZA GAYTAN, Respondent	§ § §	**BEFORE THE TEXAS BOARD OF NURSING**

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MELITZA GAYTAN, is a Vocational Nurse holding license number 169171, which is in current status at the time of this pleading.

Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.

CHARGE I.

On or about April 23, 2011, Respondent failed to comply with the Agreed Order issued to her on March 8, 2011, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Three (3) of the Order which states, in pertinent part:

> (3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars ($250.00). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order....

A copy of the March 8, 2011, Agreed Order, Findings of Fact and Conclusions of Law, is attached and incorporated, by reference, as part of this pleading.

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE II.

On or about March 9, 2012, Respondent failed to comply with the Agreed Order issued to her on March 8, 2011, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number One (1) of the Order which states, in pertinent part:

> (1) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas nursing jurisprudence and ethics....

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

CHARGE III.

On or about March 9, 2012, Respondent failed to comply with the Agreed Order issued to her on March 8, 2011, by the Texas Board of Nursing. Non-compliance is the result of Respondent's failure to comply with Stipulation Number Two (2) of the Order which states, in pertinent part:

> (2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete the course "Sharpening Critical Thinking Skills"....

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1) and (10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(11)(B).

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to and including revocation of Respondent's license to practice vocational nursing in the State of Texas pursuant to the Board's rules, 22 TEX. ADMIN. CODE §§ 213.27 - 213.33. Additionally, staff will seek to impose on Respondent the administrative costs of the proceeding pursuant to § 301.461, Texas Occupations Code. The cost of proceedings shall include, but is not limited to, the cost paid by the board to the State Office of Administrative Hearings and the Office of the Attorney General or other Board counsel for legal and investigative services, the cost of a court reporter and witnesses, reproduction of records, board staff time, travel, and expenses. These shall be in an amount of at least one thousand two hundred dollars ($1200.00).

NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, www.bon.state.tx.us.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at www.bon.state.tx.us/disciplinaryaction/discp-matrix.html.

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CONTINUED ON NEXT PAGE.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated March 8, 2011.

Filed this 18th day of July, 2012.

TEXAS BOARD OF NURSING

James W. Johnston, General Counsel
Board Certified - Administrative Law
Texas Board of Legal Specialization
State Bar No. 10838300
Jena Abel, Assistant General Counsel
State Bar No. 24036103
Lance Robert Brenton, Assistant General Counsel
State Bar No. 24066924
John R. Griffith, Assistant General Counsel
State Bar No. 24079751
Robert Kyle Hensley, Assistant General Counsel
State Bar No. 50511847
Nikki Hopkins, Assistant General Counsel
State Bar No. 24052269
John F. Legris, Assistant General Counsel
State Bar No. 00785533
TEXAS BOARD OF NURSING
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6824
F: (512) 305-8101 or (512)305-7401

Attachments: Agreed Order dated March 8, 2011.

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Vocational Nurse	§	AGREED
License Number 169171	§	
issued to MELITZA GAYTAN	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MELITZA GAYTAN, Vocational Nurse License Number 169171, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on December 22, 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(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 vocational nursing in the State of Texas.

4. Respondent received a Certificate in Vocational Nursing from Texas Southmost College, Brownsville, Texas, on August 1, 1998. Respondent was licensed to practice vocational nursing in the State of Texas on September 30, 1998.

5. Respondent's vocational nursing employment history includes:

9/1998 - 2/2001	LVN	Mother of Perpetual Help Nursing Home Brownsville, Texas

Respondent's vocational nursing employment history continued:

2/2001 - 1/2002	LVN	Port Isabel Adult Day Care Port Isabel, Texas
1/2002 - 5/2002	LVN	Texas Visiting Nurse Brownsville, Texas
5/2002 - 7/2004	LVN	San Martin Home health Brownsville, Texas
7/2004 - 1/2008	LVN	All About Kids Home Health Harlingen, Texas
1/2008 - 6/2008	LVN	Cameron County Jail Division Brownsville, Texas
6/2008 - 8/2008	LVN	Mother of Perpetual Help Nursing Home Brownsville, Texas
7/2008 - 3/2009	LVN	Valley Grande Nursing Home Brownsville, Texas
3/2009 - 11/2009	LVN	Mercy Home Health Brownsville, Texas
11/2009 - Present	LVN	Cameron County Jail Division Brownsville, Texas

6. At the time of the initial incident in Finding of Fact Number Seven (7), Respondent was employed as a Licensed Vocational Nurse with Mercy Home Health, Brownsville, Texas, and had been in this position for eight (8) months.

7. On or about November 8, 2009, while employed with Mercy Home Health, Brownsville, Texas, Respondent misappropriated Ibuprofen 600mg tablets belonging to Patient Medical Record Number ZAMMA0012 in that she admitted to such misappropriation. Respondent's conduct was likely to defraud the patient of the cost of the medication.

8. In response to the incident in Finding of Fact Number Seven (7), Respondent states that on or about November 8th she had a home health visit with patient MR who is her neighbor. The patient inquired about the Respondent's fractured ankle and offered her seven ibuprofen 600. At first the Respondent declined the offer, but accepted after the patient insisted. Respondent states that she accepted the medication only because they have been neighbors

for years. Respondent was confronted by home health the next day and returned the medication to her supervisor without hesitation. The supervisor placed them in a plastic zip-lock bag. Respondent states that she has worked at many facilities where there are many types of medications and she has never taken any. This was a one time incident in which she made a bad judgment call because the patient was her neighbor. She apologizes for this inconvenience.

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)(10), Texas Occupations Code, and 22 TEX. ADMIN. CODE §217.12(1)(B)&(6)(G).

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 169171, heretofore issued to MELITZA GAYTAN, including revocation of Respondent's license 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 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 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://learningext.com/hives/a0f6f3e8a0/summary.*

(3) RESPONDENT SHALL pay a monetary fine in the amount of two hundred fifty dollars ($250). RESPONDENT SHALL pay this fine within forty-five (45) days of entry of this Order. 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.

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 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 nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 24th day of January, 2011.

MELITZA GAYTAN, Respondent

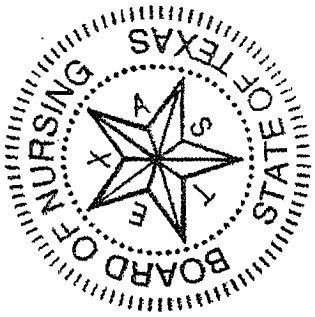
Sworn to and subscribed before me this 24th day of January, 2011.

SEAL

CRISTIAN HERRERA
Notary Public, State of Texas
My Commission Expires
May 28, 2012

Notary Public in and for the State of Texas
County of Cameron

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 8th day of March, 2011, by MELITZA GAYTAN, Vocational Nurse License Number 169171, and said Order is final.

Effective this 8th day of March, 2011.

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