BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS
****

In the Matter of Registered Nurse	§	AGREED
License Number 595458	§	
issued to WAYNE LOUIS KIERCE	§	ORDER

An investigation by the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, produced evidence indicating that WAYNE LOUIS KIERCE, hereinafter referred to as Respondent, Registered Nurse License Number 595458, may have violated Section 301.452(b)(9)&(10), Texas Occupations Code.

An informal conference was held on December 7, 2006, at the office of the Board of Nurse Examiners, in accordance with Section 301.464 of the Texas Occupations Code.

Respondent appeared in person. Respondent was notified of his right to be represented by legal counsel and elected to waive representation by counsel. In attendance were Carol Marshall, MSN, RN, Nurse Consultant, Executive Director's Designee; E. Joy Sparks, Assistant General Counsel; Anthony L. Diggs, MSCJ, Director, Enforcement Division; Candace V. Heisserman, Investigator; Elise Dunham, Investigator; Noemi Reyes, Investigator; Laura Ferell, RN, Investigator; and Marcia Wilson, RN, 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.

2. Respondent waived representation by counsel, 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 a Baccalaureate Degree in Nursing from the University of Texas Health Science Center at San Antonio, San Antonio, Texas, on December 16, 1992. Respondent was licensed to practice professional nursing in the State of Texas on September 22, 1993.

5. Respondent's professional nursing employment history includes:

9/93-4/97	Staff Nurse	University Hospital San Antonio, Texas
5/97-9/04	Assistant Professor	University of Texas Health Science Center at San Antonio San Antonio, Texas
10/02-9/04	Staff Nurse	Intellistaff Healthcare San Antonio, Texas
10/04-11/04	Staff Nurse	Christus Santa Rosa Healthcare San Antonio, Texas
6/05-8/05	Staff Nurse	Christus Spohn Health System Corpus Christi, Texas
8/05-10/05	Unknown	
10/05-Present	Staff Nurse	Hacienda Treatment Center Hunt, Texas

6. At the time of the initial incident, Respondent was employed as a Staff Nurse with Intellistaff Healthcare, San Antonio, Texas, and was working at Wilford Hall Medical Center, San Antonio, Texas, and has been in this position for approximately one (1) year and ten (10) months.

7. On or about August 26, 2004, while employed with Intellistaff Healthcare, San Antonio, Texas, and working at Wilford Hall Medical Center, San Antonio, Texas, Respondent misappropriated Demerol and Dilaudid belonging to the facility and patients thereof in that Respondent admitted to the misappropriation. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.

8. On or about August 26, 2004, while employed with Intellistaff Healthcare, San Antonio, Texas, and working at Wilford Hall Medical Center, San Antonio, Texas, Respondent engaged in the intemperate use of Demerol and Dilaudid in that Respondent admitted to the intemperate use. Possession of Demerol and Dilaudid is prohibited by Chapter 481 of the

Texas Health & Safety Code (Controlled Substances Act). The use of Demerol and Dilaudid 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. On or about October 13, 2004, while employed with Christus Santa Rosa Healthcare, San Antonio, Texas, Respondent misappropriated Demerol belonging to the facility and patients thereof in that Respondent admitted to the misappropriation. Respondent's conduct was likely to defraud the facility and patients of the cost of the medication.

10. On or about October 13, 2004, while employed with Christus Santa Rosa Healthcare, San Antonio, Texas, Respondent engaged in the intemperate use of Demerol in that Respondent admitted to the intemperate use. Possession of Demerol is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Demerol 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.

11. On or about July 14, 2005, while employed with Christus Spohn Health System, Corpus Christi, Texas, Respondent engaged in the intemperate use of Propoxyphene as evidenced by a positive drug screen. Possession of Propoxyphene is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Propoxyphene 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.

12. On or about October 2005, Respondent plead no contest to two (2) Misdemeanor counts of "Possession of a Controlled Substance," in the United States District Court, Western District of Texas, San Antonio, Texas, Case No. 505065M, in that on or about January 2004, through August 2004, while employed with Intellistaff Healthcare, San Antonio, Texas, and working at Wilford Hall Medical Center, San Antonio, Texas, Respondent misappropriated Demerol and Dilaudid belonging to the facility and patients thereof. As a result of Respondent's plea, Respondent adjudication of guilt was deferred and he was placed on probation for a period of one (1) year and assessed restitution in the amount of one hundred twenty-three dollars and thirty-nine cents ($123.39). On or about November 14, 2006, Respondent successfully completed the terms of his probation and the case was dismissed.

13. Respondent states that his date of sobriety is October 14, 2004. Respondent states that he doesn't consider his conduct described in Finding of Fact Number Eleven (11) to be a relapse in that he believed that he was consuming Motrin for back pain, which had been given to him

by a family member.

14. The Board considers Respondent's sobriety date to be July 14, 2005, as indicated in Finding of Fact Number Eleven (11).

15. On August 26, 2005, Respondent successfully completed the Chemical Dependency Intensive Outpatient Program at Christus Spohn Hospital.

16. 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), Texas Occupations Code, 22 TEX. ADMIN. CODE §§217.12(1)&(19)(effective August 2004), and 217.12(6)(G),(10)(A)&(D)&(13)(effective September 28, 2004).

4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against License Number , heretofore issued to , including revocation of Respondent's professional license to practice nursing in the State of Texas.

ORDER

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Board of Nurse Examiners, that Registered Nurse License Number 595458, previously issued to WAYNE LOUIS KIERCE, to practice professional nursing in Texas is hereby suspended for a period of three (3) years with the said suspension stayed and Respondent is hereby placed on probation for three (3) years with the following agreed terms of probation:

IT IS FURTHER AGREED and ORDERED that this Order SHALL be applicable

to Respondent's multistate privilege, if any, to practice professional 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 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.

(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 Professional Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.01 *et seq.* and this Order.

(2) RESPONDENT SHALL deliver the wallet-sized license issued to WAYNE LOUIS KIERCE, to the office of the Board of Nurse Examiners within ten (10) days of the date of this Order for appropriate notation.

(3) RESPONDENT SHALL, within one (1) year of the stay of suspension, successfully complete a course in nursing jurisprudence. 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 Registered 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, and documentation of care. 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 can be found on the Board's website* www.bne.state.tx.us *(under BNE events).*

(4) RESPONDENT SHALL, within one (1) year of the suspension being stayed, successfully complete a course in nursing 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. The course shall be a minimum of six (6) contact hours in length. In order for the course to be approved, the target audience shall include Nurses. The course shall include content on the following: principles of nursing ethics; confidentiality; and professional boundaries. RESPONDENT SHALL CAUSE the sponsoring institution to submit a Verification of Course Completion form, provided by the Board, to verify RESPONDENT's successful completion of the course. This course is to be taken in addition to any continuing education requirements the Board may have for relicensure. *Board approved courses may be found on the Board's website,* www.bne.state.tx.us *(under BNE events).*

(5) RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars ($500.00). RESPONDENT SHALL pay this fine within forty-five (45) days of the suspension being stayed. Payment is to be made directly to the Board of Nurse Examiners 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 REGISTERED 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 THREE (3) YEAR(S) OF EMPLOYMENT. THE LENGTH OF THE PROBATIONARY PERIOD WILL BE EXTENDED UNTIL SUCH THIRTY-SIX (36) MONTHS HAVE ELAPSED. PERIODS OF UNEMPLOYMENT OR OF EMPLOYMENT THAT DO NOT REQUIRE A REGISTERED NURSE LICENSE WILL NOT APPLY TO THIS PROBATIONARY PERIOD.

(6) 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.

(7) RESPONDENT SHALL CAUSE each present employer in professional 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 professional nurse.

(8) 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 professional nurse to be working on the same unit as RESPONDENT and readily 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.

(9) 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.

(10) RESPONDENT SHALL NOT practice as a professional nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned for one (1) year of employment as a professional nurse.

(11) RESPONDENT SHALL NOT practice as a professional nurse in any critical care area for one (1) year of employment as a professional nurse. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.

(12) RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, or other synthetic opiates for one (1) year of employment as a professional nurse.

(13) 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 professional nursing. These reports shall be completed by the Registered Nurse who supervises the RESPONDENT. These reports shall be submitted by the supervising Registered Nurse to the office of the Board at the end of each three (3) months for three (3) years of employment as a professional nurse.

(14) 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.**

(15) 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 second three (3) month period, random screens shall be performed at least once per month. For the remainder of the

probation period, random screens shall be performed at least once every three (3) months.

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 probation 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 probation period.

Any positive result for which the nurse does not have a valid prescription will be regarded as non-compliance with the terms of this Order and may subject the nurse to further disciplinary action by this Board.

(16) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which shall be for substance abuse; and RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least; the date of each meeting, the name of each group attended, and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) months. No duplications, copies, third party signatures, or any other substitutions will be

accepted as evidence.

IT IS FURTHER AGREED and 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.

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 waive representation by counsel. 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 to practice professional nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 24th day of April, 2007.

WAYNE LOUIS KIERCE, Respondent

Sworn to and subscribed before me this 24th day of April, 2007.

SEAL

Sergio T. Rodriguez

Notary Public in and for the State of Texas

NOTARY PUBLIC STATE OF TEXAS
SERGIO T RODRIGUEZ
My Commission Expires
December 4, 2010

WHEREFORE, PREMISES CONSIDERED, the Board of Nurse Examiners for the State of Texas does hereby ratify and adopt the Agreed Order that was signed on the 24th day of April, 2007, by WAYNE LOUIS KIERCE, Registered Nurse License Number 595458, and said Order is final.

Effective this 12th day of June, 2007.

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