

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Registered Nurse §
License Number 651444 §
issued to DENISE MARY BERGER §

ORDER OF THE BOARD

On this day, the Texas Board of Nursing, hereinafter referred to as the Board, accepted the voluntary surrender of Registered Nurse License Number 651444, issued to DENISE MARY BERGER, hereinafter referred to as Respondent. This action was taken in accordance with Section 301.453(c), Texas Occupations Code.

Respondent waived representation by counsel, informal conference, notice and hearing.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent is currently licensed to practice professional nursing in the State of Texas.
2. Respondent waived representation by counsel and notice and hearing.
3. Respondent received a Certificate in Practical Nursing from Trott Vocational High School - Adult LPN Program, Niagara Falls, New York, in 1983, and received an Associate Degree in Nursing from Niagara County Community College, Niagara Falls, New York, in May 1987. Respondent was licensed to practice practical nursing in the State of New York in 1983; was licensed to practice professional nursing in the State of Massachusetts in 1987; was licensed to practice professional nursing in the State of Michigan in 1989; and was licensed to practice professional nursing in the State of Texas on June 22, 1989.

4. Respondent's nursing employment history includes:

| | | |
|--------------------|-----------------------|--|
| 1983 to 04/1987 | Unknown | |
| 05/1987 to 06/1987 | Staff Nurse, GN/RN | Winchester Hospital Winchester, Massachusetts |

Respondent's nursing employment history continued:

| | | |
|--------------------|-------------|---|
| 07/1987 to 02/1989 | Staff Nurse | Dana Farber Boston, Massachusetts |
| 03/1989 to 07/1989 | Staff Nurse | University of Michigan Ann Arbor, Michigan |
| 08/1989 to 12/1990 | Staff Nurse | St. Mary Hospital Livonia, Michigan |
| 01/1991 to 06/1991 | Staff Nurse | Providence Hospital Southfield, Michigan |
| 07/1991 to 08/1993 | Staff Nurse | Garden City Osteopathic Hosp. Garden City, Michigan |
| 09/1993 to 10/1993 | Unknown | |
| 11/1993 to 09/1996 | Staff Nurse | Angela Hospice Livonia, Michigan |
| 10/1996 to 08/1997 | Staff Nurse | Heartland Home Health & Hospice Southfield, Michigan |
| 09/1997 to 05/1998 | Staff Nurse | Karmanos Cancer Institute Hospice Southfield, Michigan |
| 06/1998 | Unknown | |
| 07/1998 to 05/2007 | Staff Nurse | The University of Texas M. D. Anderson Cancer Center Houston, Texas |
| 06/2007 to Present | Unknown | |

5. On or about March 9, 2004, Respondent's license to practice professional nursing was issued the sanction of Warning with Stipulations through an Agreed Order by the Board of Nurse Examiners for the State of Texas. A copy of the Findings of Fact, Conclusions of Law and Order dated March 9, 2004, is attached and incorporated by reference as part of this Order.
6. At the time of the incident in Findings of Fact Numbers Seven (7) through Nine (9), Respondent was employed as a Staff Nurse with The University of Texas M. D. Anderson Cancer Center, Houston, Texas, and had been in this position for eight (8) years and ten (10) months.

7. On or about May 14, 2007, through May 15, 2007, while employed as a Staff Nurse with The University of Texas M. D. Anderson Cancer Center, Houston, Texas, Respondent failed to assess, monitor and intervene regarding the declining condition of Patient Medical Record Number SL698774, after Respondent was notified that the patient was experiencing severe low blood pressure and after the patient continued to have bloody diarrhea. Shortly after Respondent completed her shift, the patient was found to be unresponsive and expired later that day after being resuscitated and transferred to the Intensive Care Unit. Respondent's conduct may have contributed to the patient's demise.
8. On or about May 14, 2007, through May 15, 2007, while employed as a Staff Nurse with The University of Texas M. D. Anderson Cancer Center, Houston, Texas, Respondent failed to notify a physician, including the Stem Cell Transplantation Hospitalist Fellow on call, or nurse managers of the declining condition of the aforementioned Patient Medical Record Number SL698774. Respondent's conduct deprived care givers and physicians of information needed to, and the opportunity to, institute timely medical interventions to stabilize the patient and/or prevent complications.
9. On or about May 14, 2007, through May 15, 2007, while employed as a Staff Nurse with The University of Texas M. D. Anderson Cancer Center, Houston, Texas, Respondent failed to document in the medical record her assessment, the vital signs, or the declining condition of the aforementioned Patient Medical Record Number SL698774. Respondent's conduct resulted in an incomplete medical record and exposed the patient unnecessarily to risk of injury in that it deprived subsequent care givers of vital information on which to base further decisions regarding the patient's care.
10. In response to the incident in Findings of Fact Numbers Seven (7) through Nine (9), Respondent states that she was shocked to discover that three pages of her documentation regarding the patient were missing and believes that they may have inadvertently been placed in the shredder by mistake. Regarding notification of health care team members of the patient's low blood pressure, Respondent states that her brain had not registered the low blood pressure because the patient had been consistently running a low blood pressure anyway, and as a result she did not go into "alert" mode.
11. Formal Charges were filed and mailed to Respondent on November 27, 2007.
12. On November 14, 2007, Respondent returned License Number 651444 and submitted a statement to the Board voluntarily surrendering the right to practice professional nursing in Texas.

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 a violations of Section 301.452(b)(10)&(13), Texas Occupations Code, and 22 TEX. ADMIN. CODE §§ 217.11(1)(A),(1)(B),(1)(D), (1)(M),(1)(P)&(3)(A) and 217.12(1)(A),(1)(B),(1)(C)&(4).
4. Under Section 301.453(c), Texas Occupations Code, the Board has the authority to accept the voluntary surrender of a license.
5. Under Section 301.453(d), Texas Occupations Code, the Board may impose conditions for reinstatement of licensure.
6. Any subsequent reinstatement of this license will be controlled by Section 301.452 (b), Texas Occupations Code, and 22 TAC §§ 213.26-.29, and any amendments thereof in effect at the time of the reinstatement.

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

ORDER

NOW, THEREFORE, IT IS ORDERED that the voluntary surrender of Registered Nurse License Number 651444, heretofore issued to DENISE MARY BERGER, to practice professional nursing in the State of Texas, is accepted by the Executive Director on behalf of the Texas Board of Nursing. In connection with this acceptance, the Board imposes the following conditions:

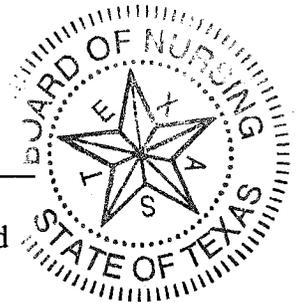
1. RESPONDENT SHALL NOT practice professional nursing, use the title of registered nurse or the abbreviation "RN" or wear any insignia identifying herself as a registered nurse or use any designation which, directly or indirectly, would lead any person to believe that RESPONDENT is a registered nurse during the period in which the license is surrendered.
2. RESPONDENT SHALL NOT petition for reinstatement of licensure until: one (1) year has elapsed from the date of this Order.
3. Upon petitioning for reinstatement, RESPONDENT SHALL satisfy all then existing requirements for relicensure.

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.

Effective this 19th day of February, 2008.

TEXAS BOARD OF NURSING

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



BEFORE THE BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

In the Matter of License Number 651444 § AGREED
issued to DENISE MARY BERGER § ORDER

On this day the Board of Nurse Examiners for the State of Texas, hereinafter referred to as the Board, considered the matter of DENISE MARY BERGER, License Number 651444, 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 conference, notice and hearing, and agreed to the entry of this Order offered on January 2, 2004, 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.
2. Respondent waived representation by counsel, informal conference, 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.
4. Respondent received an Associate Degree in Nursing from Niagara County Community College, Sanborn, New York, on May 1, 1987. Respondent was licensed to practice professional nursing in the State of Texas on June 22, 1989.
5. Respondent's professional employment history includes:

| | | |
|---------------|----------------------|------------------------------|
| 07/87 - 02/89 | Staff RN | Dana Farber Cancer Institute |
| | Oncology Bone Marrow | Boston, Massachusetts |
| | Transplant Unit | |

Respondent's professional employment history continued:

| | | |
|-----------------|--|--|
| 02/89 - 07/89 | Staff RN Hematology/Oncology Unit | University of Michigan Hospital Ann Arbor, Michigan |
| 01/91 - 06/91 | Staff RN Hematology/Oncology Unit | Providence Hospital Southfield, Michigan |
| 06/91 - 08/93 | Staff RN/Charge RN Hematology/Oncology Unit | Garden City Osteopathic Hospital Garden City, Michigan |
| 11/93 - 09/96 | Staff RN Hospice Care | Angela Hospice Livonia, Michigan |
| 10/96 - 08/97 | Staff RN Primary Case Manager | Heartland Home Health Care and Hospice Southfield, Michigan |
| 08/97 - 05/98 | Staff RN Primary Case Manager | Karmanos Cancer Institute Hospice Southfield, Michigan |
| 07/98 - Present | Staff RN Medical/Surgical Unit | M. D. Anderson Cancer Center Houston, Texas |

6. At the time of the incidents, Respondent was employed as a Staff Nurse in the Medical/Surgical Unit with M. D. Anderson Cancer Center, Houston, Texas, and had been in this position for four (4) years and six (6) months.
7. On or about January 26, 2003, while employed with M. D. Anderson Cancer Center, Houston, Texas, Respondent administered two (2) Dilaudid 1mg boluses, at 0307 and 0441, without a physician's order to Patient Medical Record Number 482991. The patient was found lying on the floor beside her bed, incontinent of stool, at approximately 0747. Respondent's behavior exposed the patient unnecessarily to a risk of experiencing hypotension, bradycardia, ileus, urinary retention, respiratory depression and/or bronchospasm.
8. On or about January 26, 2003, while employed at M. D. Anderson Cancer Center, Houston, Texas, Respondent may have lacked fitness to practice professional nursing. On February 6, 2003, Respondent met with the nurse manager to discuss the incident involving Patient Medical Record Number 482991. Upon clarification of the event, Respondent could not verify if she had contacted Dr. H., or not, to request an order for additional doses of Dilaudid for the patient. Respondent was unable to recall the situation and associated her lapse in memory with the start of a fish oil supplement as recommended by Respondent's nutritionist. Respondent's behavior was likely to expose the patient unnecessarily to a risk of experiencing unsafe and/or ineffective nursing care.

9. On or about January 27, 2003, while employed with M. D. Anderson Cancer Center, Houston, Texas, Respondent made false entries in the medical record of Patient Medical Record Number 482991, after Respondent was notified of the incident and findings involving the patient. Respondent documented a late entry in the patient's chart, ordering additional doses of Dilaudid for Patient Medical Record Number 482991 from Dr. H. When questioned, Dr. H. emphatically stated that she did not receive a page from Respondent and that she did not give Respondent an order for additional doses of Dilaudid. Respondent's behavior was likely to deceive other caregivers who needed complete information on which to base their care.

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(3),(4),(12)&(20).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against License Number 651444, heretofore issued to DENISE MARY BERGER, 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 RESPONDENT SHALL receive the sanction of a Warning with Stipulations, and 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.

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 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.

IT IS FURTHER AGREED that:

(1) RESPONDENT SHALL deliver the wallet-sized license issued to DENISE MARY BERGER, to the office of the Board of Nurse Examiners within ten (10) days from date of ratification of this Order for appropriate notation.

(2) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in Texas 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 may be found on the Board's website, www.bne.state.tx.us (under BNE events).*

(3) RESPONDENT SHALL, within one (1) year of entry of this Order, successfully complete a course in medication administration. 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. The didactic portion of this

course shall be a minimum of six (6) hours in length. The course shall contain a minimum twenty-four (24) hour clinical component which is to be provided by the same Registered Nurse who provides the didactic portion of this course. The clinical component SHALL focus on tasks of medication administration only. In order for the course to be approved, the course's content shall include: a review of proper administration procedures for all standard routes; computation of drug dosages; the five (5) rights of medication administration; factors influencing the choice of route; and possible adverse effects resulting from improper administration. 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 on the Board's website www.bne.state.tx.us (under BNE events).*

(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. 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 Registered 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 on the Board's website www.bne.state.tx.us (under BNE events).*

(5) RESPONDENT SHALL, within one (1) year of entry of this Order successfully complete a course in nursing ethics. RESPONDENT SHALL obtain Board approval of the course prior to enrollment. 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 Registered 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).*

(6) 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. 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 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 REGISTERED NURSE (RN) LICENSE WILL NOT APPLY TO THIS STIPULATION PERIOD:

(7) RESPONDENT SHALL notify each present employer in professional 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 professional 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.

(8) 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.

(9) 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 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 one (1) year of employment as a professional nurse.

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.

BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK.

CONTINUED ON NEXT PAGE.

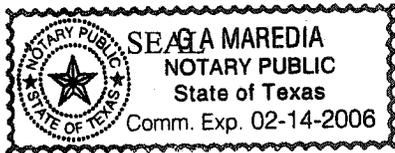
RESPONDENT'S CERTIFICATION

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

Signed this 3 day of Feb., 2004.

Denise Mary Berger
DENISE MARY BERGER, Respondent

Sworn to and subscribed before me this 3rd day of February, 2004.



SMaredia
Notary Public in and for the State of TEXAS

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 3rd day of February, 2004, by DENISE MARY BERGER, License Number 651444, and said Order is final.

Effective this 9th day of March, 2004.



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

