

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.
Katherine A. Thomas
Executive Director of the Board

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of Nurse Anesthetist and § AGREED
Registered Nurse License Number 252897 §
issued to GARY L. MESSICK § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of GARY L. MESSICK, Nurse Anesthetist and Registered Nurse License Number 252897, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(3)&(10), Texas Occupations Code. Respondent waived informal proceedings, notice and hearing, and agreed to the entry of this Order offered on May 16, 2012, by Katherine A. Thomas, MN, RN, FAAN, 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 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.
4. Respondent received a Baccalaureate Degree in Nursing from University of Texas, Austin, Texas on May 1, 1980. Respondent was licensed to practice professional nursing in the State of Texas on September 4, 1980. Respondent was authorized to practice as a Nurse Anesthetist by the Texas Board of Nurse Examiners on January 14, 1987.
5. Respondent's professional nursing employment history includes:

09/80 - 07/84	Unknown	
08/84 - 02/85	RN	M.D. Anderson Houston, Texas

Respondent's professional nursing employment history continued:

1985 - 1998	RN/CRNA	John Peter Smith Hospital Fort Worth, Texas
1997 - 2009	CRNA	Parkland Memorial Hospital Dallas, Texas
2009 - 2011	CRNA	Vitriviam Medical Houston, Texas
05/11 - Present	CRNA	Frio Regional Hospital Pearsall, Texas

6. On or about March 25, 2011, Respondent plead guilty to "Possession of a Controlled Substance PG1 < 1G," a State Jail Felony (committed on March 24, 2010) in the Criminal District Court No. 1 of Tarrant County, Texas, under Cause Number 1210668. An adjudication of guilt was deferred, and Respondent was placed on community supervision for a period of three (3) years.
7. 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.
8. On or about December 12, 2011, Respondent presented for a psychological evaluation conducted by J. Ray Hays, Ph.D., J.D., and Karen A. Lawson, MPH, Ph.D. Dr. Hays states that is the opinion of both examiners that Respondent is capable of remaining licensed as a nurse in Texas. He states that interview and test results do not suggest that he has any impairment in his ability to act in accordance to the Board's rules and standards set in Texas Administrative Code for nurses. Dr. Hays states that it is their opinion that Respondent is capable of avoiding behaviors that constitute unprofessional conduct as a licensed nurse in the State of Texas. Dr. Hays states that the only recommendation at this time is that Respondent continue with all current legal requirements that are in place which will involve random urine testing for another two years through March of 2014.
9. Formal Charges were filed on August 4, 2011.
10. Formal Charges were mailed to Respondent on August 5, 2011.

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 violation of Section 301.452(b)(3)&(10), Texas Occupations Code, and 22 Tex. Admin. Code §217.12(11)(B)&(13).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Nurse Anesthetist and Registered Nurse License Number 252897, heretofore issued to GARY L. MESSICK, 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 Nurse Anesthetist and Registered Nurse License Number 252897, previously issued to GARY L. MESSICK, is hereby SUSPENDED and said suspension is ENFORCED until Respondent successfully completes, and is discharged from, terms of Community Supervision as outlined in Finding of Fact Number Six (6), and provides documentation of successful completion of a treatment program approved by the Board.

IT IS FURTHER AGREED and ORDERED that, while under the terms of this Order, this Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.

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 and authorization to practice as a Certified Registered Nurse Anesthetist are encumbered by this order the 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, upon verification of successful completion of terms of Community Supervision as outlined in Finding of Fact Number Six (6), and of the approved

treatment, the Suspension will be STAYED, and RESPONDENT will be placed on PROBATION for three (3) years with the following agreed terms of probation:

(1) 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.

(2) RESPONDENT SHALL pay all re-registration fees, if applicable, and RESPONDENT'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.

(3) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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.texas.gov/disciplinaryaction/stipscourses.html>.

(4) RESPONDENT SHALL, within one (1) year of the suspension being stayed, 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. *Board-approved courses may be found at the following Board website address: <http://www.bon.texas.gov/disciplinaryaction/stipscourses.html>.*

(5) RESPONDENT SHALL pay an administrative 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 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 THAT WHILE RESPONDENT'S SUSPENSION IS STAYED, SHOULD RESPONDENT PRACTICE AS A CERTIFIED REGISTERED NURSE ANESTHETIST OR REGISTERED NURSE IN THE STATE OF TEXAS, RESPONDENT WILL PROVIDE DIRECT PATIENT CARE AND PRACTICE IN A HOSPITAL, OR OTHER CLINICAL SETTING AND RESPONDENT MUST WORK IN SUCH SETTING A MINIMUM OF SIXTY-FOUR (64) HOURS PER MONTH UNDER THE FOLLOWING PROBATION CONDITIONS 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 THE USE OF A REGISTERED NURSE (RN) OR ADVANCED PRACTICE AUTHORIZATION, AS APPROPRIATE, WILL NOT APPLY TO THIS STIPULATION PERIOD:

(6) RESPONDENT SHALL notify all future employers in nursing of this Order of the Board and the probation conditions on RESPONDENT'S license(s). 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 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.

(8) Should the RESPONDENT choose to practice as a Certified Registered Nurse Anesthetist (CRNA) under this Order, RESPONDENT SHALL be directly supervised for the first year of practice as a CRNA by an Anesthesiologist or CRNA who has been approved by the Board. Direct supervision requires another CRNA or Anesthesiologist to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL ensure that the monitor submits reports, addressing RESPONDENT's progress in overcoming these deficiencies to the office of the Board at the end of each three (3) month period. Meetings may be longer and more frequent if the monitor determines necessary. RESPONDENT

SHALL NOT be employed by a nurse registry or temporary nurse employment agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

After successful completion of supervised probation under the conditions outlined above, and for the remainder of the probation period, RESPONDENT SHALL be supervised by a Anesthesiologist or CRNA who is on the premises. The supervising Anesthesiologist or CRNA 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 supervisor 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.

(9) Should RESPONDENT choose to practice as a Certified Registered Nurse Anesthetist (CRNA) at, and only at, Frio Regional Medical Center, Pearsall, Texas, under this Order, the following applies as an alternative to the supervision requirements outlined in Stipulation Eight (8), above:

RESPONDENT SHALL provide a copy of this Agreed Order to the CEO/Administrator of Frio Regional Medical Center (FRMC), Pearsall, Texas, and RESPONDENT's indirect supervisor Marlon J. Cook, Certified Registered Nurse Anesthetist (CRNA). The CEO/Administrator and Marlon J. Cook shall independently complete 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 CRNA.

RESPONDENT shall be proctored and monitored by Marlon J. Cook (CRNA), and the CEO/Administrator of FRMC, who shall meet with RESPONDENT weekly to discuss RESPONDENT's cases and RESPONDENT's compliance with this Order. If an irregularity concerning the RESPONDENT's provision of care, his abstinence from controlled substances, or his behavior is discovered, then Marlon J. Cook (CRNA), and/or the CEO/Administrator of FRMC, shall immediately notify the board within five (5) days. RESPONDENT SHALL ensure that Marlon J. Cook (CRNA) and the CEO/Administrator of FRMC submit monitoring reports, addressing RESPONDENT's progress in overcoming any deficiencies to the office of the Board at the end of each three (3) month period. Meetings may be longer and more frequent if the monitor determines necessary.

RESPONDENT SHALL work only on regularly assigned, identified, and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry or temporary nurse employment agency. RESPONDENT SHALL NOT be self-employed or contract for services, except for services provided to FRMC. Multiple employers are prohibited.

In addition to the supervision and monitoring provided by the CEO/Administrator of FRMC and Marlon J. Cook (CRNA), RESPONDENT SHALL be directly supervised by a physician who is on the premises of FRMC at all times. This supervision shall come from the licensed physician for whom RESPONDENT is providing Anesthesia services, whether it be an OB/GYN, an Ophthalmologist, or Emergency Department Physician. The CEO/Administrator and Marlon J. Cook (CRNA) shall ensure that all attending physicians and physician providers to FRMC and its patients who will supervise RESPONDENT shall be aware of the terms and conditions of this Order and are willing to provide this supervision to RESPONDENT. Additionally, RESPONDENT will have each supervising physician provide the date and time, print his or her

name, and sign on a log sheet for each shift or procedure, as applicable, RESPONDENT works under the supervision of said physician. The physician supervision log sheet will be maintained by the CEO/Administrator of FRMC both prior to, and following, each of RESPONDENT's shifts. The CEO/Administrator, or in the case of his or her absence, a designated administrator or supervisor, will confirm the signature of each physician supervisor by noting the date and time, printing his or her name, and signing the log sheet at the end of each shift. The CEO/Administrator will submit the log sheets, and RESPONDENT's weekly or monthly schedule, as verification of hours/shifts RESPONDENT worked, as applicable, as attachments to the required quarterly monitoring reports.

If an irregularity in RESPONDENT's provision of care or behavior occurs, the supervising physician shall immediately notify the CEO / Administrator of FRMC, and/or Marlon J. Cook (CRNA), who shall immediately apprise the Board of the situation.

While employed at FRMC, RESPONDENT SHALL submit to random periodic drug screens. For the first three (3) month period, random screens shall be performed at least once per week. For the next six (6) month period, random screens shall be performed at least twice per month. For the remainder of the probation period, random screens shall be performed at least once every month. All random screens SHALL BE conducted through urinalysis, in accordance with the procedures required under Stipulations Sixteen (16) of this Order.

Should RESPONDENT work at a facility other than FRMC while under this Order, then Stipulation Sixteen (16) of this Order shall apply to RESPONDENT's drug screening frequency based on the amount of time RESPONDENT has worked and screened under this Order at FRMC.

Should RESPONDENT choose to NOT work as a CRNA at FRMC, the above stipulation specified for employment at FRMC SHALL NO LONGER APPLY, and the direct supervision under Stipulation Eight (8), as well as all other stipulations contained in this Order,

SHALL APPLY. This stipulation DOES NOT create an exception for ANY of the stipulations contained in this Order, EXCEPT, the direct supervision under Stipulation Eight (8) of this Order. The exception provided by this stipulation, Stipulation Nine (9), only applies as long as RESPONDENT is employed as a CRNA at FRMC.

(10) Should Respondent surrender his authority to practice as an advance practice nurse or choose not to seek employment as a CRNA and work as a RN, RESPONDENT SHALL be directly supervised by a Registered Nurse for the first year of practice as a Registered Nurse. Direct supervision requires another nurse to be working on the same unit as RESPONDENT and immediately 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.

After successful practice as a RN, under the supervision conditions outlined above, and for the remainder of the probation period, 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.

(11) During the probationary period, 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 or as a CRNA, as appropriate. These reports shall be completed by the nurse, CRNA or physician who supervises the RESPONDENT. These reports shall be submitted by the supervising nurse, CRNA or physician to the office of the Board at the end of each three (3) months for three (3) years of employment as a nurse.

(12) RESPONDENT SHALL NOT practice 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 CRNA or RN.

(13) 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 nurse.

(14) Should Respondent surrender his authority to practice as an advance practice nurse or choose not to seek employment as a CRNA and work as a RN, RESPONDENT SHALL NOT practice as a nurse in any critical care area for one (1) year of employment as a 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.

(15) 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.

(16) During the period of probation when Respondent's suspension is stayed, 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. For the remainder of the probation period, random screens shall be performed at least once every three (3) months. 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 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 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.

(17) RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. 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,
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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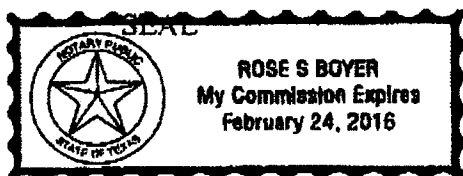
RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order. I 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 21st day of JUNE, 2012.

Gary L. Messick Respondent
GARY L. MESSICK, Respondent

Sworn to and subscribed before me this 21 day of JUNE, 2012.



Rose S. Boyer
Notary Public in and for the State of TEXAS

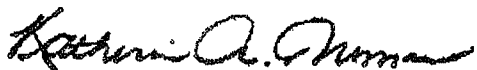
Approved as to form and substance.

Louis Leichter
LOUIS LEICHTER, Attorney for Respondent

Signed this 21 day of JUNE, 2012.

~~WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does~~
hereby ratify and adopt the Agreed Order that was signed on the 21st day of June, 2012, by
GARY L. MESSICK, Nurse Anesthetist and Registered Nurse License Number 252897, and
said Order is final.

Effective this 19th day of July, 2012.



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