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*Katherine A. Thomas*  
Executive Director of the Board

## BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of Registered Nurse	§	AGREED
License Number 510466 and	§	
Vocational Nurse License Number 63561	§	
issued to ROBERT E. WITTMAYER	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of ROBERT E. WITTMAYER, Registered Nurse License Number 510466 and Vocational Nurse License Number 63561, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may have violated Section 301.452(b)(9)&(10), Texas Occupations Code. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order offered on July 27, 2011, by Katherine A. Thomas, MN, RN, Executive Director.

### FINDINGS OF FACT

1. Prior to the institution of Agency proceedings, notice of the matters specified below in these Findings of Fact was served on Respondent and Respondent was given an opportunity to show compliance with all requirements of the law for retention of the license(s).
2. Respondent waived representation by counsel, informal proceedings, notice and hearing, and agreed to the entry of this Order.
3. Respondent is currently licensed to practice professional nursing in the State of Texas. Respondent's license to practice vocational nursing in the State of Texas is currently in delinquent status.
4. Respondent received a Certificate in Vocational Nursing from Harris Hospital School of Vocational Nursing, Fort Worth, Texas, on January 10, 1975. Respondent was licensed to practice vocational nursing in the State of Texas on May 19, 1975. Respondent received an Associate Degree in Nursing from Tarrant County Junior College, Fort Worth, Texas, on May 1, 1983. Respondent was licensed to practice professional nursing in the State of Texas on August 30, 1983.

5. Respondent's complete professional and vocational nursing employment history includes:

01/1975-08/1976	LVN	Harris Methodist Hospital Fort Worth, Texas
08/1976-08/1978	LVN	John Peter Smith Hospital Fort Worth, Texas
08/1978-08/1983	LVN	Northeast Community Hospital Bedford, Texas
08/1983-05/1996	RN	Northeast Community Hospital Bedford, Texas
06/1996-06/1999	RN	Grand Prairie Medical Center Grand Prairie, Texas
06/1999-11/2009	RN	Baylor All Saints Medical Center Fort Worth, Texas
12/2009	Unknown	
01/10-Present	RN	Weatherford Regional Medical Center Weatherford, Texas

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with Baylor All Saints Medical Center, Fort Worth, Texas, and had been in this position for approximately ten (10) years and five (5) months.
7. On or about November 12, 2009, while employed as a Registered Nurse with Baylor All Saints Medical Center, Fort Worth, Texas, Respondent engaged in the intemperate use of Fentanyl in that he submitted a specimen for a drug screen that produced a positive result for Fentanyl (3500 ng/mL). Unlawful Possession of Fentanyl is prohibited by Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act). The use of Fentanyl by a Registered Nurse, while subject to call or duty, could impair the nurse's ability to recognize subtle signs, symptoms or changes in the patient's conditions, 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.

8. In response to Finding of Fact Number Seven (7), Respondent states after receiving the results of the screen, he met with his manager where he stated that the only way he could have been exposed to Fentanyl was by hanging a sedation drip. Respondent stated when he pulled the spike out of the old bag that 5-7cc's of liquid went onto his hand and forearm while he was spiking the new bag and resetting the IV infusion pump. Respondent states, he then left the room and applied the Alcar alcohol foam to his hands and arm bilaterally. Additionally, Respondent states after research he confirmed with Pharmacists that if accidental contact is made with Fentanyl via the skin to wash thoroughly with water, not soap or alcohol, as it may enhance the drugs ability to penetrate the skin.
9. On or about March 23, 2011, Respondent sat for a Forensic Psychological Evaluation with a Chemical Dependency Component with Emily Fallis, Ph.D., Licensed Psychologist, Fort Worth, Texas. Dr. Fallis summarized that Mr. Wittmayer demonstrated no evidence of current psychopathology through interview and observation. Dr. Fallis adds that he has a history of substance abuse, which he apparently overcame with treatment and personal strengths. Dr. Fallis opines that Mr. Wittmayer should have no difficulty avoiding behaviors which the Board of Nursing has identified as constituting unprofessional conduct and in particular, Dr. Fallis states she found little evidence that he may abuse substances either while on duty as a nurse or in other contexts. Dr. Fallis concludes that Mr. Wittmayer is unlikely to have difficulty behaving consistently in accordance with the requirements of Rules 213.27 and 213.29 at 22 Texas Administrative Code, as well as the minimum standards set by the Boards Rules and generally accepted nursing standards.
10. On or about July 26, 2011, while employed as a Registered Nurse with Weatherford Regional Medical Center, Weatherford, Texas, Respondent admitted to staff of the Texas Board of Nursing that due to the stress of the investigation he had relapsed on Hydromorphone seven (7) to ten (10) days ago. Respondent's conduct could have affected his ability to recognize subtle signs, symptoms or changes in patients' conditions, and could have affected his ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patients in potential danger.
11. The Respondent's conduct described in the preceding Findings of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
12. 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.
13. Respondent's conduct described in Findings of Fact Number Seven (7) through Ten (10) resulted from Respondent's dependency on chemicals.
14. Respondent's compliance with the terms of a Board approved peer assistance program should be sufficient to protect patients and the public.

### 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 and 22 TEX. ADMIN. CODE §217.12(1)(A)&(B),(4),(5),(10)(A)&(D) and (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 510466 and Vocational Nurse License Number 63561, heretofore issued to ROBERT E. WITTMAYER, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
5. The Board may, in its discretion, order a nurse to participate in a peer assistance program approved by the Board if the nurse would otherwise have been eligible for referral to peer assistance pursuant to Section 301.410, Texas Occupations Code.

### ORDER

IT IS THEREFORE AGREED and ORDERED that RESPONDENT, in lieu of the sanction of Revocation under Section 301.453, Texas Occupations Code, SHALL comply with the following conditions for such a time as is required for RESPONDENT to successfully complete the Texas Peer Assistance Program for Nurses (TPAPN):

(1) RESPONDENT SHALL, within forty-five (45) days following the date of entry of this final Order, apply to TPAPN and SHALL, within ninety (90) days following the date of entry of this final Order, sign and execute the TPAPN participation agreement, which SHALL include payment of a non-refundable participation fee in the amount of five hundred dollars (\$500.00) payable to TPAPN.

(2) Upon acceptance into the TPAPN, RESPONDENT SHALL waive confidentiality and provide a copy of the executed TPAPN participation agreement to the Texas Board of Nursing.

(3) RESPONDENT SHALL comply with all requirements of the TPAPN participation agreement during its term and SHALL keep his license(s) to practice nursing in the State of Texas current.

(4) RESPONDENT SHALL CAUSE the TPAPN to notify the Texas Board of Nursing of any violation of the TPAPN participation agreement.

IT IS FURTHER AGREED and ORDERED, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, Section §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §211.1 *et seq.* and this Order.

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

IT IS FURTHER AGREED and ORDERED that while Respondent's license(s) is/are encumbered by this Order, Respondent may not work outside the State of Texas pursuant to a multistate licensure 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, SHOULD RESPONDENT fail to comply with this Order or the terms of the participation agreement with the TPAPN, such noncompliance will result in 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.

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RESPONDENT'S CERTIFICATION

I understand that I have the right to legal counsel prior to signing this Agreed Order.

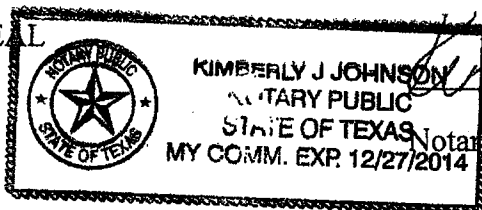
I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violations alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses. By my signature on this Order, I agree to the Findings of Fact, Conclusions of Law, and Conditions One (1) through Four (4) of this Order to obtain disposition of the allegations through peer assistance and to avoid further disciplinary action in this matter. I waive judicial review of this Order. I understand that this Order becomes effective upon acceptance by the Executive Director on behalf of the Texas Board of Nursing, 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 2 day of SEPT, 2011.

Robert E. Wittmayer  
ROBERT E. WITTMAYER, Respondent

Sworn to and subscribed before me this 2 day of September, 2011.

SEAL



Kimberly J. Johnson  
Notary Public in and for the State of Texas

WHEREFORE PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby accept and enter the Agreed Order that was signed on the 2nd day of September, 20 11, by ROBERT E. WITTMAYER, Registered Nurse License Number 510466 and Vocational Nurse License Number 63561, and said Order is final.

Entered and effective this 9th day of September, 20 11.



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