

IN THE MATTER OF PERMANENT §  
REGISTERED NURSE LICENSE §  
NUMBER 775933 ISSUED TO §  
CHERYL LEE JOHNSTON §

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.  
*Patricia A. Plummer*  
Executive Director of the Board

**ORDER OF THE BOARD**

TO: Cheryl Lee Johnston  
P.O. Box 690967  
Houston, TX 77269

During open meeting held in Austin, Texas, on **February 11, 2014**, 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 Registered Nurse License Number 775933, previously issued to CHERYL LEE JOHNSTON, 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 11th day of February, 2014.

TEXAS BOARD OF NURSING



BY:

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

Attachment: Formal Charge filed November 7, 2013.

Re: Permanent Registered Nurse License Number 775933  
Issued to CHERYL LEE JOHNSTON  
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of February, 2014, 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

Cheryl Lee Johnston  
P.O. Box 690967  
Houston, TX 77269

Via USPS First Class Mail

Cheryl Lee Martin  
103 Peckham Street SE  
Port Charlotte, FL 33952

BY:



---

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

In the Matter of Permanent  
Registered Nurse License  
Number 775933 Issued to  
CHERYL LEE JOHNSTON,  
Respondent

§  
§  
§  
§  
§

BEFORE THE TEXAS  
  
BOARD OF NURSING

### FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, CHERYL LEE JOHNSTON, is a Registered Nurse holding License Number 775933, which is in delinquent 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 18, 2013, Respondent was issued an Order of Emergency Suspension by the State of Florida Department of Health for failure to enter into the Intervention Project for Nurses (IPN) program. Subsequently, on or about June 20, 2013, Respondent was issued a Final Order by the Florida Board of Nursing wherein Respondent's license to practice professional nursing in the State of Florida was Suspended. Copies of the Order of Emergency Suspension issued by the State of Florida Department of Health, dated April 18, 2013, and Final Order issued by the Florida Board of Nursing, dated June 20, 2013, are 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)(8), Texas Occupations Code.

NOTICE IS GIVEN that staff will present evidence in support of the recommended disposition of up to, and including, revocation of Respondent's license/s to practice nursing in the State of Texas pursuant to the Nursing Practice Act, Chapter 301, Texas Occupations Code and 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 Section 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).

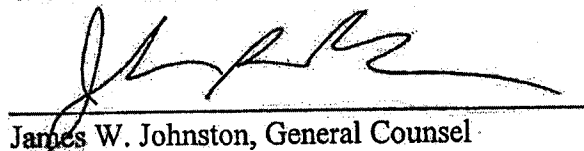
NOTICE IS GIVEN that all statutes and rules cited in these Charges are incorporated as part of this pleading and can be found at the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, which can be found at [www.bon.texas.gov/disciplinaryaction/discp-matrix.html](http://www.bon.texas.gov/disciplinaryaction/discp-matrix.html).

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Order of Emergency Suspension issued by the State of Florida Department of Health, dated April 18, 2013, and Final Order issued by the Florida Board of Nursing, dated June 20, 2013.

Filed this 7 day of November, 2013.

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

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) 305-6811  
F: (512) 305-8101 or (512)305-7401

Attachments: Order of Emergency Suspension issued by the State of Florida Department of Health, dated April 18, 2013, and Final Order issued by the Florida Board of Nursing, dated June 20, 2013.

D/2012.06.19

FILED DATE APR 02 2013

Department of Health

By *[Signature]*  
Deputy Agency Clerk

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

In Re: Emergency Suspension of the License of  
Cheryl Lee Martin, R.N.  
License No.: RN 9302320  
Case No.: 2013-03294

**ORDER OF EMERGENCY SUSPENSION OF LICENSE**

John H. Armstrong, MD, FACS, State Surgeon General and Secretary of Health, ORDERS the emergency suspension of the license of Cheryl Lee Martin, R.N., to practice as a registered nurse. Ms. Martin holds license number RN 9302320. Her address of record is 103 Peckham Street, S.E. Port Charlotte, Florida 33952. The following Findings of Fact and Conclusions of Law support the emergency suspension of Ms. Martin's license to practice as a registered nurse.

**FINDINGS OF FACT**

1. The Department of Health ("Department") is the state agency charged with regulating the practice of nursing pursuant to Chapters 20, 456, and 464, Florida Statutes (2012). Section 456.073(8), Florida Statutes (2012), authorizes the State Surgeon General to summarily suspend Ms. Martin's license to practice as a registered nurse in the State of Florida, in accordance with Section 120.60(6), Florida Statutes (2012).

2. At all times material to this order, Ms. Martin was licensed to practice as a registered nurse pursuant to Chapter 464, Florida Statutes (2012).

3. On or about September 12, 2012, Ms. Martin contacted the Intervention Project for Nurses ("IPN"). She reported that when she submitted to a urine drug test at her workplace, the test returned positive for alcohol. Ms. Martin stated that she drank alcohol until about 2:30 a.m., before reporting to work in the morning. The IPN case manager advised Ms. Martin about the requirements of IPN participation, including the requirements to refrain from nursing practice and submit to an IPN-facilitated evaluation.

4. IPN is the impaired practitioner program for the Board of Nursing, pursuant to Section 456.076, Florida statutes (2012). IPN monitors the evaluation, care and treatment of impaired nurses. IPN oversees random drug screens and provides for the exchange of information between treatment providers, evaluators and the Department for the protection of the public.

5. On or about October 2, 2012, Ms. Martin submitted to an IPN-facilitated evaluation conducted by D.M.B., M.D., a specialist in addiction

psychiatry. According to the written evaluation, Ms. Martin explained her referral to IPN. Ms. Martin indicated that she had difficulty sleeping and would wake up at 2:00 or 3:00 a.m., sometimes using alcohol to help her sleep. On the date of the drug test, Ms. Martin explained that she drank during the night before reporting to work in the morning, but could not state how many drinks she had. Ms. Martin stated she must have smelled like alcohol, prompting the test. Ms. Martin stated that alcohol use has been a problem since she was about 16 years old. Her longest period of abstinence in recent years was one month in about January of 2011. Ms. Martin explained that she would drink wine after getting home from work and then would have three mixed drinks before going to bed at about 10:00 p.m. After going to bed, Ms. Martin would wake up in the middle of the night and drink more alcohol. Ms. Martin stated her last drink of alcohol was the night prior to the evaluation. Dr. D.M.B. opined that Ms. Martin was dependent on alcohol and that her ability to provide safe nursing care was impaired. Dr. D.M.B. recommended residential chemical dependency treatment.



6. On or about November 14, 2012, Ms. Martin notified IPN that she did not agree with Dr. D.M.B.'s recommendations for residential treatment. Ms. Martin requested a second-opinion evaluation.

7. On or about December 20, 2012, Ms. Martin submitted to a second-opinion IPN-facilitated evaluation conducted by D.P.M., M.D., a specialist in addiction medicine. According to the written evaluation, Ms. Martin explained a long history of alcohol abuse, starting at age 16. Ms. Martin was 51 years old at the time of the evaluation. Ms. Martin believed outpatient treatment would be sufficient for her, stating her last drink was about three weeks before the evaluation. When Dr. D.P.M. advised Ms. Martin that he would conduct drug and alcohol testing that would detect alcohol use that has occurred over the previous five to seven days, Ms. Martin admitted that she continued to drink since her previous evaluation with Dr. D.M.B. and drank alcohol the night before the second evaluation. Dr. D.P.M. opined that Ms. Martin was dependent on alcohol and also opined that Ms. Martin needed residential chemical dependency treatment. Dr. D.P.M. concluded that outpatient treatment would not be sufficient for Ms. Martin. Dr. D.P.M. opined that Ms. Martin was unable to practice nursing with reasonable skill and safety.

8. On or about January 8, 2013, IPN sent a letter to Ms. Martin, advising her that she needed to enter into residential treatment. IPN provided Ms. Martin with contact information for several facilities where she could obtain residential treatment. IPN gave Ms. Martin a deadline of January 22, 2013, to enter into the recommended treatment.

9. On or about January 24, 2013, Ms. Martin contacted IPN and stated that she was trying to get into a treatment program, but was having difficulty.

10. On or about January 29, 2013, IPN sent a letter to Ms. Martin advising her to enter into residential chemical dependency treatment by the deadline date of February 12, 2013.

11. On or about January 30, 2013, Ms. Martin notified IPN that she had made an appointment with a treatment center at the end of the following week.

12. On or about February 12, 2013, the IPN case manager called Ms. Martin and left her a voicemail message advising her to contact IPN by the close of business the next day, on or about February 13, 2013. According to IPN, Ms. Martin did not return the call.

13. On or about February 19, 2013, the IPN case manager attempted to contact Ms. Martin by phone, but the phone number was no longer in service.

14. On or about February 20, 2013, after receiving no further contact from Ms. Martin and no verification that she entered into treatment, IPN closed Ms. Martin's IPN file due to her failure to enter into the recommended chemical dependency treatment.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the State Surgeon General concludes as follows:

1. The State Surgeon General has jurisdiction pursuant to Sections 20.43 and 456.073(8), Florida Statutes (2012), and Chapter 464, Florida Statutes (2012).

2. Section 464.018(1)(j), Florida Statutes (2012), subjects a licensee to discipline, including suspension, for being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.

3. Ms. Martin is unable to practice nursing with reasonable skill and safety due to use of alcohol. According to a two recent evaluations by specialists in addiction psychiatry and addiction medicine, Ms. Martin is unable to practice nursing with reasonable skill and safety and is in need of residential treatment. IPN attempted to facilitate Ms. Martin's entrance into residential treatment, but Ms. Martin did not enter into the treatment and ceased correspondence with IPN. Ms. Martin is no longer monitored by IPN.

4. Section 120.60(6), Florida Statutes (2012), authorizes the Department to summarily suspend a registered nurse's license if the Department finds that the nurse presents an immediate serious danger to the public health, safety, or welfare.

5. Because registered nurses are required to assess the condition of their patients and make complex decisions regarding patient care, mental fitness and emotional stability are essential traits that a registered nurse must possess in order to competently practice nursing. Ms. Martin has described a long-term problem with alcohol abuse and was referred to IPN after testing positive for alcohol in the workplace. Ms. Martin did not comply with the treatment recommended by two IPN-facilitated

evaluations, demonstrating that Ms. Martin does not possess the needed mental fitness and emotional stability to safely practice as a registered nurse. According to two recent evaluations by specialists in addiction psychiatry and addiction medicine, Ms. Martin is not able to practice nursing with reasonable skill and safety.

6. Ms. Martin's lack of mental fitness and emotional stability represent a significant likelihood that Ms. Martin will cause harm to patients. This probability constitutes an immediate serious danger to the health, safety, or welfare of the citizens of the State of Florida. Because two specialists opined that Ms. Martin is unsafe to practice nursing and because Ms. Martin did not enter into the recommended chemical dependency treatment and is no longer monitored by IPN, there is no restriction available to the Department that can ensure that Ms. Martin is safe to practice nursing and is not continuing to abuse alcohol. Nothing short of the immediate suspension of Ms. Martin's license will ensure the protection of the public from this danger.

7. Ms. Martin's continued practice as a registered nurse constitutes an immediate serious danger to the health, safety, or welfare of

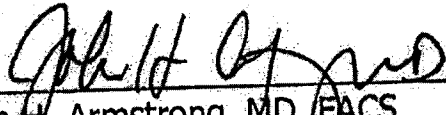
the public and this summary procedure is fair under the circumstances to adequately protect the public.

WHEREFORE, in accordance with Section 120.60(6), Florida Statutes (2012), it is ORDERED THAT:

1. The license of Cheryl Lee Martin, R.N., license number RN 9302320, is immediately suspended.

2. A proceeding seeking formal suspension or discipline of the license of Cheryl Lee Martin, R.N., to practice as a registered nurse will be promptly instituted and acted upon in compliance with Sections 120.569 and 120.60(6), Florida Statutes (2012).

DONE and ORDERED this 18<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
John H. Armstrong, MD, FACS  
State Surgeon General and Secretary of Health

PREPARED BY:  
KATHY GATZLAFF  
Consultant  
Fla. Bar No 0494461  
Florida Department of Health  
Office of the General Counsel  
4052 Bald Cypress Way, Bin #C65  
Tallahassee, Florida 32399-3265  
Telephone: (850) 245-4444, ext 8193  
Facsimile: (850) 413-8743

In Re: Emergency Suspension of License of  
Cheryl Lee Martin, R.N.  
License No.: RN 9302320  
Case No.: 2013-03294

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to Sections 120.60(6), and 120.68, Florida Statutes (2012), this Order is judicially reviewable. Review proceedings are governed by the Florida Rules of Appellate Procedure. Proceedings are commenced by filing a Petition for Review, in accordance with Florida Rule of Appellate Procedure 9.100, with the District Court of Appeal, accompanied by a filing fee prescribed by law, and a copy of the Petition with the Agency Clerk of the Department within 30 days of the date this Order is filed.

FILED DATE JUN 20 2013

Department of Health

By: Ornela Gadea  
Deputy Agency Clerk

STATE OF FLORIDA  
BOARD OF NURSING

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2013-03294

License No.: RN 9302320

CHERYL LEE MARTIN,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF NURSING (Board) June 7, 2013, in Tampa, Florida, for the purpose of considering a settlement agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the settlement agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the settlement agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference. The costs are \$987.82. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the settlement agreement.


This Final Order shall take effect upon being filed with the Clerk of the Department of Health.



DONE AND ORDERED this 19<sup>th</sup> day of June,

2013.

BOARD OF NURSING

  
\_\_\_\_\_  
Joe R. Baker, Jr.  
Executive Director for  
Ann-Lynn Denker, PhD, ARNP  
Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to CHERYL LEE MARTIN, 103 Peckham St., SE, Port Charlotte, FL 33952 and IPN, P.O. Box 49130, Jacksonville, FL 32240; and by interoffice delivery to Lee Ann Gustafson, Senior Assistant Attorney General, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050, Jodi-Ann Johnson, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin C-65, Tallahassee, Florida 32399-3265 this 20<sup>th</sup> day of June, 2013.



\_\_\_\_\_  
Deputy Agency Clerk

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**TO:** Cassandra G. Pasley, BSN, JD, Chief  
Bureau of Health Care Practitioner Regulation

**FROM:** Joe Baker, Jr., Executive Director  
Florida Board of Nursing

**DATE:** June 12, 2013

**RE:** Delegation of Authority

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During my absence on Thursday, June 13, 2013, through Wednesday, June 19, 2013, the following managers are delegated authority for the board office:

6/13	William Spooner	Program Ops Administrator
6/14-17	Robert Johnson	Program Ops Administrator
6/18	Mr. Spooner	
6/19	Mr. Johnson	

Thank you.

JBjr/ms

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**v.**

**CASE NO.: 2013-03294**

**CHERYL LEE MARTIN, R.N.,**

**Respondent.**

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**SETTLEMENT AGREEMENT**

Pursuant to Section 120.57(4), Florida Statutes, the above named parties hereby offer this Settlement Agreement (Agreement) to the Board of Nursing as disposition of the Administrative Complaint, attached hereto as Exhibit "A", in lieu of any other administrative proceedings. The terms herein become effective only if and when a Final Order accepting this Agreement is issued by the Board and filed with the Agency Clerk. In considering this Agreement, the Board may review all materials gathered during the investigation of this case. If this Agreement is rejected, it, and its presentation to the Board, shall not be used against either party.

**STIPULATED FACTS**

1. Respondent is a REGISTERED NURSE in the State of Florida holding license number **9302320**.
2. Respondent is charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapters 456 and/or 464, Florida Statutes. A true and correct copy of the Administrative Complaint is attached hereto and incorporated by reference as Exhibit A.
3. Respondent neither admits nor denies the factual allegations contained in the Administrative Complaint.

**STIPULATED LAW**

1. Respondent admits that he/she is subject to the provisions of Chapters 456 and 464, Florida Statutes, and the jurisdiction of the Department and the Board.
2. Respondent admits that the stipulated facts, if proven true, constitute violations of law as alleged in the Administrative Complaint.

3. Respondent admits that the Agreement is a fair, appropriate, and reasonable resolution of this pending matter.

### **PROPOSED DISPOSITION**

1. The Respondent must pay investigative costs not to exceed ONE THOUSAND NINE HUNDRED SIXTY SIX DOLLARS AND FIFTY FOUR CENTS (**\$1,966.54**) within two (2) years from the date of entry of the Final Order. Payment shall be made to the Board of Nursing and mailed to, DOH- Compliance Management Unit, 4052 Bald Cypress Way, Tallahassee, Florida 32399-3276, Attention: Nursing Compliance Officer. **Payment must be made by cashier's check or money order ONLY.** Personal checks will **NOT** be accepted.

2. The license of CHERYL LEE MARTIN, R.N., is suspended and shall remain suspended until such time that Respondent enters into the Intervention Project for Nurses (IPN), and complies with any and all terms and conditions imposed by IPN. At such time the suspension shall be stayed and remain stayed as long as the Respondent participates in IPN. It is the duty of the Respondent to contact IPN at P.O. Box 49130, Jacksonville Beach, Florida 32249-9130, (904) 270-1620, within 30 days from the date of

entry of the Final Order accepting this Settlement Agreement. The Respondent shall comply with all conditions of IPN Advocacy Contract or she will be in violation of the Final Order.

3. Termination from IPN shall result in the immediate lifting of the stay of suspension. Reinstatement will require compliance with all terms and conditions set forth in any previous Final Order issued by the Board and the Respondent's appearance before the Board to demonstrate his/her present ability to engage in the safe practice of nursing. The Board reserves the right to impose reasonable conditions of reinstatement at the time of appearance before the Board.

4. The Respondent shall not violate Chapter 456 or 464, Florida Statutes, the rules promulgated pursuant thereto, any other state or federal law, rule, or regulation relating to the practice or the ability to practice nursing. Violation of an order from another state/jurisdiction shall constitute grounds for violation of the Final Order accepting this Settlement Agreement.

5. It is expressly understood that this Settlement Agreement is subject to the approval of the Department and the Board, and has no force and effect until a Final Order is entered accepting this Settlement Agreement.

6. This Settlement Agreement is executed by the Respondent for the purpose of avoiding further administrative action by the Board of Nursing regarding the acts or omissions specifically set forth in the Administrative Complaint attached hereto. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to, or in conjunction with, consideration of the Agreement. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to, and consideration of, this Settlement Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings. Respondent shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law.

7. Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached hereto. This Agreement relates solely to

the current disciplinary proceedings arising from the above-mentioned Administrative Complaint and does not preclude further action by other divisions, departments, and/or sections of the Department, including but not limited to the Agency for Health Care Administration's Medicaid Program Integrity Office.

8. The Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this disciplinary proceeding.

9. Respondent waives all rights to appeal and further review of this Agreement and these proceedings.

**WHEREFORE**, the parties hereto request the Board enter a Final Order accepting and implementing the terms of the Settlement Agreement contained herein.

**SIGNED** this 26 day of April, 2013.

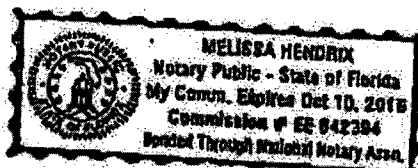
  
\_\_\_\_\_  
**CHERYL LEE MARTIN, R.N.**



STATE OF FLORIDA  
COUNTY OF Charlotte

Before me personally appeared Cheryl Martin whose identity is known to be by FSL (type of identification), and who under oath, acknowledges that his/her signature appears above. Sworn to and subscribed by Respondent before me this 26 day of April, 2013.

Melissa Hendrix  
Notary Public  
My Commission Expires:



APPROVED this 29<sup>th</sup> day of April, 2013.

John H. Armstrong, MD, FACS  
State Surgeon General and Secretary of Health

Mary S. Miller  
**Mary S. Miller**  
Assistant General Counsel  
Florida Bar No.: 0780420  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, BIN #C-65  
Tallahassee, Florida 32399-3265  
Telephone (850) 245-4444 ext. 8104  
Facsimile (850) 245-4683

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DOH v. Cheryl L. Martin, RN  
Case No. 2013-03294

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**Case No. 2013-03294**

**v.**

**CHERYL LEE MARTIN, R.N.,**

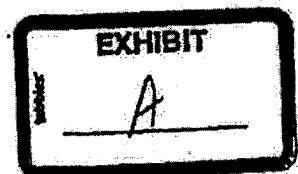
**Respondent.**

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**ADMINISTRATIVE COMPLAINT**

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Nursing against Respondent, Cheryl Lee Martin, R.N., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of nursing pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 464, Florida Statutes.
2. At all times material to this Complaint, Respondent was a registered nurse (R.N.) within the state of Florida, having been issued license number RN 9302320.



3. Respondent's address of record is 103 Peckham Street, Southeast, Port Charlotte, Florida 33952.

4. On or about September 12, 2012, Respondent contacted the Intervention Project for Nurses ("IPN"). According to IPN, Respondent reported that when she submitted to a urine drug test at her workplace, the test returned positive for alcohol. Respondent stated that she drank alcohol until about 2:30 a.m., before reporting to work in the morning.

5. IPN is the Impaired practitioner program for the Board of Nursing, pursuant to Section 456.076, Florida statutes (2012). IPN monitors the evaluation, care and treatment of impaired nurses. IPN oversees random drug screens and provides for the exchange of information between treatment providers, evaluators and the Department for the protection of the public.

6. On or about October 2, 2012, Respondent submitted to an IPN-facilitated evaluation conducted by D.M.B., M.D., a specialist in addiction psychiatry. According to the written evaluation, Respondent explained her referral to IPN. Respondent indicated that she had difficulty sleeping and would wake up at 2:00 or 3:00 a.m., sometimes using alcohol to help her sleep. On the date of the drug test, Respondent explained she drank

during the night before reporting to work in the morning, but could not state how many drinks she consumed. Respondent explained she would drink wine after getting home from work and then would consume three mixed drinks before going to bed. After going to bed, Respondent would wake up in the middle of the night and drink more alcohol. Respondent stated her last drink of alcohol was the night before the evaluation. Dr. D.M.B. opined that Respondent was dependent on alcohol and her ability to provide safe nursing care was impaired. Dr. D.M.B. recommended Respondent enter into residential chemical dependency treatment.

7. On or about November 14, 2012, Respondent notified IPN that she did not agree with Dr. D.M.B.'s recommendations for residential treatment. Respondent requested a second-opinion evaluation.

8. On or about December 20, 2012, Respondent submitted to a second-opinion IPN-facilitated evaluation conducted by D.P.M., M.D., a specialist in addiction medicine. According to the written evaluation, Respondent believed outpatient treatment would be sufficient for her, claiming her last drink was about three weeks before the evaluation. When Dr. D.P.M. advised Respondent he would conduct drug and alcohol testing that would detect alcohol use which occurred over the previous five to

seven days, Respondent admitted she continued to drink since her previous evaluation with Dr. D.M.B. and drank alcohol the night before the second evaluation. Dr. D.P.M. opined that Respondent was dependent on alcohol and Respondent needed to enter into residential chemical dependency treatment. Dr. D.P.M. concluded outpatient treatment would not be sufficient for Respondent. Dr. D.P.M. opined Respondent was unable to practice nursing with reasonable skill and safety.

9. On or about January 8, 2013, IPN sent a letter to Respondent, advising her that she needed to enter into residential treatment. IPN gave Respondent a deadline of January 22, 2013, to enter into the recommended treatment.

10. On or about January 24, 2013, Respondent contacted IPN and stated she was trying to get into a treatment program, but was having difficulty.

11. On or about January 29, 2013, IPN sent a letter to Respondent advising her to enter into residential chemical dependency treatment by the deadline date of February 12, 2013.

12. On or about February 12, 2013, the IPN case manager called Respondent and left her a voicemail message advising her to contact IPN

by the close of business the next day, on or about February 13, 2013. According to IPN, Respondent did not contact IPN on or before the close of business on or about February 13, 2013.

13. On or about February 20, 2013, after receiving no further contact from Respondent and no verification that she entered into treatment, IPN closed Respondent's IPN file because she failed to enter into the recommended chemical dependency treatment.

14. Respondent is unable to practice nursing with reasonable skill and safety due to alcohol use. According to a two recent evaluations by specialists in addiction psychiatry and addiction medicine, Respondent is unable to practice nursing with reasonable skill and safety and is in need of residential treatment. IPN attempted to facilitate Respondent's entrance into residential treatment, but Respondent did not enter into the treatment and ceased contact with IPN. Respondent is no longer monitored by IPN.

15. Because registered nurses are required to assess the condition of their patients and make complex decisions regarding patient care, mental fitness and emotional stability are essential traits that a registered nurse must possess in order to competently practice nursing. Respondent was referred to IPN after testing positive for alcohol in the workplace.

Respondent did not comply with the treatment recommended by two IPN-facilitated evaluations, demonstrating that Respondent does not possess the needed mental fitness and emotional stability to safely practice as a registered nurse. According to two recent evaluations by specialists in addiction psychiatry and addiction medicine, Respondent is not able to practice nursing with reasonable skill and safety.

**COUNT ONE**

16. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth herein.

17. Section 464.018(1)(j), Florida Statutes (2012), provides that being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition constitutes grounds for discipline of a licensee by the Board of Nursing.

18. Respondent is unable to practice nursing with reasonable skill and safety to patients because of alcohol use. Respondent abused alcohol and admitted to two IPN evaluators she consumed alcohol during the evenings before her scheduled evaluations. According to a two recent evaluations by specialists in addiction psychiatry and addiction medicine,

Respondent is unable to practice nursing with reasonable skill and safety and is in need of residential treatment. Respondent did not comply with the treatment recommended by two IPN-facilitated evaluations, demonstrating Respondent does not possess the needed mental fitness and emotional stability to safely practice as a registered nurse.

19. Based on the foregoing, Respondent violated Section 464.018(1)(j), Florida Statutes (2012), by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition.

#### **COUNT TWO**

20. Petitioner realleges and incorporates paragraphs one (1) through fifteen (15) as if fully set forth herein.

21. Section 456.072(1)(hh), Florida Statutes (2012), provides that being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into



by the licensee, or for not successfully completing any drug treatment or alcohol treatment program constitutes grounds for disciplinary action.

22. On or about February 20, 2013, IPN closed Respondent's IPN file because Respondent failed to enter the recommended chemical dependency treatment.

23. Based on the foregoing, Respondent violated Section 456.072(1)(hh), Florida Statutes (2012), by being terminated from a treatment program for Impaired practitioners, which is overseen by an Impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

WHEREFORE, the Petitioner respectfully requests that the Board of Nursing enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 19<sup>th</sup> day of April, 2013.

John H. Armstrong, MD, FACS  
Surgeon General and Secretary of Health

Mary S. Miller  
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**FILED**  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK [Signature]  
DATE 4-19-13

PCP: April 19, 2013  
PCP Members: Kerp + Horne  
/MM

### **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.**

### **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.**