



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or its of record in the offices of the Texas Board of Nursing.
Stephanie A. Johnson
Executive Director of the Board

DOCKET NUMBER 507-18-4800

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 875965,
ISSUED TO
MATTHEW WILLIAM SMITH**

**§
§
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§
§**

**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: MATTHEW WILLIAM SMITH
5139 YANK COURT
ARVADA, CO 80002**

**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on October 25-26, 2018, the Texas Board of Nursing (Board) considered the following items: (1) Order No. 2, *Conditional Order of Default Dismissal and Remand*, issued by the ALJ in the above cited matter; (2) Staff's recommendation that the Board revoke the Respondent's registered nursing license by default; and (3) Respondent's recommendation to the Board regarding the above cited matter, if any.

On September 11, 2018, the ALJ convened a hearing on the merits in this matter. Staff of the Board was present for the hearing. However, the Respondent was not present at the hearing, and no one appeared on his behalf. During the hearing on September 11, 2018, Staff introduced evidence into the record demonstrating that Respondent had been sent a Notice of Final Hearing by first class certified mail return receipt requested to his last known address of record maintained by the Board in accordance with 22 Tex. Admin. Code §213.10(a). The ALJ found that Staff's notice was adequate and issued Order No. 2, *Conditional Order of Default Dismissal and Remand*, granting Staff's Motion for Default and dismissing the case from the docket of SOAH and remanding it to the Board for informal disposition on a default basis in accordance with the Government Code §2001.056.

The Board, after review and due consideration of Order No. 2, issued by the ALJ in the above cited matter, finds that notice of the facts or conduct alleged to warrant disciplinary action has been provided to Respondent in accordance with the Government Code §2001.054(c) and Respondent has been given an opportunity to show compliance with all the requirements of the Occupations Code Chapter 301 (Nursing Practice Act) for retention of Respondent's license to practice professional nursing in the State of Texas. The Board further finds that the Formal Charges were properly initiated and filed in accordance with the Occupations Code §301.458. The Board further finds that proper and timely notice regarding the violations alleged in the Formal Charges was given to Respondent in accordance with the requirements of the Government Code §2001.051 and §2001.052 and 1 Tex. Admin. Code §155.501. The Board further finds that the Respondent failed to appear in accordance with 22 Tex. Admin. Code Chapter 213 and

1 Tex. Admin. Code §155.501. As a result of the Respondent's failure to appear, the Board has determined that the factual allegations listed in the Formal Charges are to be deemed admitted by default and the Board is authorized to enter a default order against the Respondent pursuant to the Government Code §2001.056 and 22 Tex. Admin. Code §213.22. Further, the Board has determined that it is entitled to revoke the Respondent's registered nursing license pursuant to 22 Tex. Admin. Code §213.33(m).

Therefore, the Board hereby adopts the factual allegations and conclusions of law contained in the Formal Charges, which have been deemed admitted, and which are attached hereto and incorporated herein by reference for all purposes, and 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 in accordance with the Government Code Chapter 2001 and 22 Tex. Admin. Code §213.23(l), as applicable. 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.

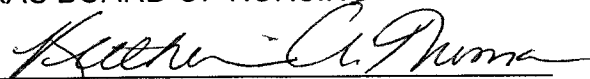
IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 875965, previously issued to MATTHEW WILLIAM SMITH, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 25th day of October, 2018.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN, FAAN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Formal Charges

In the Matter of § BEFORE THE TEXAS
Permanent Registered Nurse §
License Number 875965 §
Issued to MATTHEW WILLIAM SMITH, §
Respondent § BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MATTHEW WILLIAM SMITH, is a Registered Nurse holding License Number 875965, which is in invalid 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 February 9, 2018, Respondent became noncompliant with the Agreed Order issued to him by the Texas Board of Nursing on December 14, 2015. Noncompliance is the result of Respondent's failure to comply with all requirements of the Colorado Peer Assistance Program. Stipulation I (C) of the Agreed Order dated December 14, 2015, reads, in pertinent part:

"RESPONDENT SHALL comply with all requirements of the applicable participation agreement during its term."

On or about February 9, 2018, Respondent's Colorado license to practice professional nursing was Suspended by the State of Colorado Board of Nursing, Denver, Colorado. A copy of the Findings of Fact, Conclusions of Law, and Agreed Order dated December 14, 2015, is attached and incorporated, by reference, as part of this pleading. A copy of the State of Colorado Order of Suspension effective February 9, 2018, is 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)(1),(8)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.12(9)&(11)(B).

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.

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.

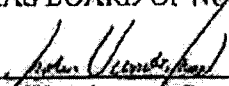
NOTICE IS GIVEN that to the extent applicable, based on the Formal Charges, the Board will rely on adopted policies related to Substance Use Disorders and Other Alcohol and Drug Related Conduct; and related to Behavior Involving Fraud, Theft, and Deception, which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, www.bon.texas.gov.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is/are attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Agreed Order dated December 14, 2015, and State of Colorado Order of Suspension effective February 9, 2018.

Filed this 30th day of July, 2018.

TEXAS BOARD OF NURSING


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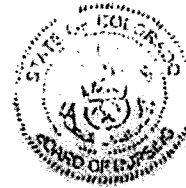
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Attachments: Agreed Order dated December 14, 2015, and State of Colorado Order of Suspension effective February 9, 2018.

D(2018.04.12)

BEFORE THE STATE BOARD OF NURSING
STATE OF COLORADO



I do hereby certify the foregoing to be a true copy of the document which is on file or is of record in my office

R. Mulvaney 2/9/18
Authorized Signature

Case No. 2018-0774 and 2016-0416

ORDER OF SUSPENSION PURSUANT TO SECTION 12-38-131(4), C.R.S.

IN THE MATTER OF THE LICENSE TO PRACTICE AS A PROFESSIONAL NURSE IN THE STATE OF COLORADO OF MATTHEW WILLIAM SMITH, RN LICENSE NUMBER 1631812,

Respondent.

TO: Matthew William Smith, RN ("Respondent")

Pursuant to section 12-38-131(4), C.R.S., Respondent's license to practice as a professional nurse in the State of Colorado is hereby suspended by the State Board of Nursing ("Board"), effective February 9, 2018 based upon the following:

1. Respondent was licensed to practice as a professional nurse in the State of Colorado on or about February 18, 2015, and was issued license number 1631812. Respondent has been licensed at all relevant times therein and is now so licensed.
2. Effective April 7, 2016, Respondent and the Board entered into a Stipulation and Final Agency Order (Stipulation) in lieu of a formal disciplinary hearing. The Stipulation allowed Respondent to participate in the Nursing Peer Health Assistance or Nurse Alternative to Discipline Program, administered by Peer Assistance Services ("PAS"). The conditions of the Stipulation were imposed pursuant to the authority of section 12-38-116.5(4)(c)(III), C.R.S.
3. Respondent agreed to be bound by the terms and conditions set forth in the Stipulation which is fully incorporated herein by this reference.
4. Respondent's contract with Peer Assistance Services was effective on December 4, 2015 and required him to: Abstain from mind and mood altering drugs, substances, and alcohol; obtain written verification from all health care providers stating s/he has been notified of Respondent's illness of alcoholism, addiction, physical or psychological problem; discuss all prescription and over-the-counter drugs with the PAS Program Case Manager; provide copies of all prescriptions and the Provider Verification Form to his Case Manager within 24 hours of receipt of prescription; maintain regular contact with assigned Program Case Manager as determined by PAS; provide written verification of completion of a physical examination annually; submit his Colorado State Board of Pharmacy Prescription Drug Monitoring Program (PDMP) report to PAS every six months; obtain and complete the necessary consent forms for Release of Confidential Information between all treatment providers, employers, sponsors, emergency contacts, and regulatory agencies; keep consent forms current; inform PAS of any crimes, criminal arrests, citations, deferred sentences and convictions or complaints filed with the Board within 24 hours of his

knowledge of the complaint; attend all appointments, therapy sessions, meetings, and/or groups, and submit reports or attendance verification as determined by PAS; submit random urine drug screens and/or random Breath, Body fluids, or Hair Analysis as required by PAS; adhere to the PAS Travel Policy, practice requirements and a Return to Work agreement; complete and comply with a Relapse Prevention Plan; and submit monthly self-status reports.

5. On January 30, 2018, the Board received information from Peer Assistance Services that Respondent failed to attend or complete the program for the following reasons:
 - a. Respondent submitted urine drug screens which confirmed positive for Amphetamines on September 3, 2017 and January 16, 2018. On January 18, 2018, Respondent denied he used Amphetamines during a phone conversation with PAS staff.
 - b. On January 26, 2018 Respondent met in person with his PAS case manager. During the meeting, Respondent acknowledged having used Amphetamines prior to submitting the positive urine drug screens on January 16, 2018 and September 3, 2017. Respondent stated he received the pills from a friend and denied diversion.
 - c. During the January 26, 2018 meeting, Respondent also admitted that he had been forging his sponsor reports since June of 2016. Since that time Respondent has submitted 20 fraudulent sponsor reports to PAS.
 - d. Respondent failed to submit a urine drug test on three (3) occasions: July 29, 2017, October 25, 2017 and December 30, 2017.
 - e. Respondent failed to call the Sentry UA testing line on December 1, 2017.
 - f. Respondent submitted a dilute urine drug test on three (3) occasions: 3/28/17 (creatinine 16.8), 5/6/17 (creatinine 16.8), and 1/2/18 (creatinine 19.0).
 - g. Respondent failed to submit reports by the due date on eight (8) occasions between December 14, 2016 and January 30, 2018.
 - h. Respondent failed to ensure the submission of 3rd party reports by the due date on eleven (11) occasions between December 14, 2016 and January 30, 2018.
6. Respondent thereby failed to comply with the April 7, 2016 Stipulation and Final Agency Order.

THEREFORE IT IS ORDERED, in accordance with section 12-38-131(4), C.R.S., that the license to practice professional nursing of Matthew William Smith is suspended effective 5:00 p.m., February 9, 2018. Any such suspension shall remain in effect until lifted by the Board. The Board shall lift the suspension upon review of evidence establishing that Respondent has resumed compliance with the April 7, 2016 Stipulation and Final Agency Order.

COMMENCING AT 5:00 P.M. ON FEBRUARY 9, 2018, RESPONDENT SHALL NOT ENGAGE IN OR PERFORM ANY ACT REQUIRING A COLORADO LICENSE TO PRACTICE PROFESSIONAL NURSING.

DATED AND SIGNED this 6th day of February, 2018.

FOR THE STATE BOARD OF NURSING



Sam Delp
Program DirectorP



BEFORE THE TEXAS BOARD OF NURSING



I do hereby certify that 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

In the Matter of § AGREED
Registered Nurse License Number 875965 §
issued to MATTHEW WILLIAM SMITH § ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MATTHEW WILLIAM SMITH, Registered Nurse License Number 875965, hereinafter referred to as Respondent.

Information received by the Board produced evidence that Respondent may be subject to discipline pursuant to Section 301.452(b)(9) & (10), Texas Occupations Code. Respondent waived notice and hearing and agreed to the entry of this Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on November 4, 2015.

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 notice and hearing and agreed to the entry of this Order.
3. Respondent's license to practice as a professional nurse in the State of Texas is in current status.
4. Respondent received a Baccalaureate Degree in Nursing from Denver School of Nursing, Denver, Colorado, on December 19, 2014. Respondent was licensed to practice professional nursing in the State of Texas on April 13, 2015.
5. Respondent's nursing employment history includes:

Unknown - 10/15 RN Baylor Scott and White Memorial Hospital
Temple, Texas

11/15 - Present Unknown

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with Baylor Scott and White Memorial Hospital, Temple, Texas.

7. On or about October 4, 2015, while employed as a Registered Nurse with Baylor Scott and White Hospital, Temple, Texas, Respondent diverted Morphine and Hydromorphone belonging to the facility or patients thereof, in that he admitted to said diversion for his personal use. Respondent's conduct was likely to defraud the facility and patients of the cost of the medications.
8. On or about October 4, 2015, while employed as a Registered Nurse with Baylor Scott and White Hospital, Temple, Texas, Respondent engaged in the intemperate use of Morphine and Hydromorphone in that he submitted a specimen for a cause drug screen which resulted positive for Morphine and Hydromorphone. Unlawful possession of Morphine and Hydromorphone is prohibited by Chapter 481 of the Texas Health & Safety Code (Controlled Substances Act). The use of Morphine and Hydromorphone 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 condition, and could impair the nurse's ability to make rational, accurate, and appropriate assessments, judgments, and decisions regarding patient care, thereby placing the patient in potential danger.
9. Respondent admits to the conduct outlined in Findings of Fact Numbers Seven (7) and Eight (8).
10. Respondent's last known date of sobriety is unknown.
11. 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.
12. Respondent's conduct as described in the preceding Finding(s) of Fact was reportable under the provisions of Sections 301.401-301.419, Texas Occupations Code.
13. Respondent's conduct as described in the preceding Finding(s) of Fact resulted from or was significantly influenced by Respondent's substance use disorder.
14. 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 substance use disorder.
15. 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 301.451-301.555, the Board has jurisdiction over this matter.
2. Notice was served in accordance with law.
3. The evidence received is sufficient to prove violation(s) of 22 TEX. ADMIN. CODE §217.12(5), (6)(G), (8), (10)(A), (10)(D), (10)(E) & (11)(B).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(9) & (10), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 875965, heretofore issued to MATTHEW WILLIAM SMITH, including revocation of Respondent's license(s) to practice nursing in the State of Texas.
5. Pursuant to Section 301.463(d), Texas Occupations Code, this Agreed Order is a settlement agreement under Rule 408, Texas Rules of Evidence, in civil or criminal litigation.
6. 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.

TERMS OF ORDER

I. SANCTION

IT IS THEREFORE AGREED and ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 875965, previously issued to MATTHEW WILLIAM SMITH, to practice nursing in Texas is hereby **SUSPENDED** and said suspension is **ENFORCED** until Respondent:

- A. Applies to, is accepted into, and completes enrollment in the Texas Peer Assistance Program for Nurses (TPAPN), including payment of a non-refundable participation fee in the amount of five hundred dollars (\$500.00), waives confidentiality, and provides a copy of the fully executed TPAPN participation agreement to the Texas Board of Nursing;

OR

- B. Applies to, is accepted into, and completes enrollment in the Colorado Nursing Peer Health Assistance Program as an alternative to TPAPN, waives confidentiality and provides a copy of the fully executed Colorado Nursing Peer Health Assistance Program participation agreement to the Texas Board of Nursing.

IT IS FURTHER AGREED, upon verification of successful completion of one of the above specified requirements (either the requirements of paragraph A or B), the Suspension will be STAYED, and RESPONDENT will be placed on PROBATION for such a time as is required for RESPONDENT to successfully complete the TPAPN or Colorado Nursing Peer Health Assistance Program, as applicable, AND until Respondent fulfills the additional requirements of this Order.

- C. RESPONDENT SHALL comply with all requirements of the applicable participation agreement during its term.
- D. RESPONDENT SHALL keep all applicable license(s) to practice nursing in current status.
- E. RESPONDENT SHALL CAUSE the applicable program to notify the Texas Board of Nursing of any violation of the participation agreement.

II. COMPLIANCE WITH LAW AND APPLICABILITY.

While under the terms of this Order, RESPONDENT agrees to 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.

- 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.
- This Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.
- This Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.

- Respondent may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where Respondent wishes to work.

III. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education course(s) within one (1) year of the suspension being stayed:

A Board-approved course in Texas nursing jurisprudence and ethics that 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. Home study courses and video programs will not be approved.

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

IV. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

V. EFFECT OF NONCOMPLIANCE

~~SHOULD RESPONDENT fail to comply with this Order or the terms of the~~
participation agreement with the TPAPN or the Colorado Nursing Peer Health Assistance Program, such noncompliance will result in further disciplinary action including TEMPORARY 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.

VI. RESTORATION OF UNENCUMBERED LICENSE(S)

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 may 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 waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. I do acknowledge possessing a diagnosis that deems me eligible to participate in the Texas Peer Assistance Program for Nurses or the Colorado Nursing Peer Health Assistance Program, as applicable. By my signature on this Order, I agree to the entry of this Order and all conditions of said 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.

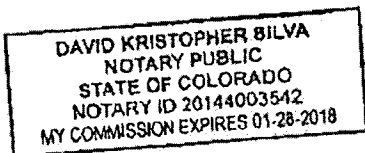
Signed this 30th day of November, 2015.



MATTHEW WILLIAM SMITH, Respondent

Sworn to and subscribed before me this 30th day of November, 2015.


SEAL



Notary Public in and for the State of Colorado
County of Jefferson

WHEREFORE, PREMISES CONSIDERED, the Executive Director, on behalf of the Texas Board of Nursing, does hereby ratify and adopt the Agreed Order that was signed on the 30th day of November, 2015, by MATTHEW WILLIAM SMITH, Registered Nurse License Number 875965, and said Order is final.

Effective this 14th day of December, 2015.



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