

BEFORE THE TEXAS BOARD OF NURSING

In the Matter of	§	AGREED ORDER
Vocational Nurse License Number 322006	§	
issued to NICHOLAS LUCERO	§	
	§	

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considers the matter of NICHOLAS LUCERO, Vocational Nurse License Number 322006, 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)(10)&(13), Texas Occupations Code.

Respondent waived notice and hearing and agreed to the entry of this Agreed Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on September 18, 2020.

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 Agreed Order.
3. Respondent's license to practice as a vocational nurse in the State of Texas is in delinquent status.
4. Respondent received a Certificate in Vocational Nursing from North Central Texas College Vocational Program, Gainesville, Texas, on August 1, 2014. Respondent was licensed to practice vocational nursing in the State of Texas on September 16, 2014.
5. Respondent's nursing employment history includes:

9/2014 – 10/2014	Unknown	
10/2014 – 2/2015	Licensed Vocational Nurse	Cook Children's Physician Network Denton, Texas

Respondent's nursing employment history continued:

3/2015 – 2/2016	Licensed Vocational Nurse	Cimarron Living Center Lewisville, Texas
3/2016 – 7/2016	Unknown	
8/2016 – 2/2018	Licensed Vocational Nurse	Pecan Creek Pediatrics Denton, Texas
3/2018 – 5/2018	Unknown	
6/2018 – 3/2019	Licensed Vocational Nurse	University of Texas Student Health and Wellness Center Denton, Texas
4/2019 – Present	Unknown	

6. At the time of the initial incident, Respondent was employed as a Licensed Vocational Nurse with the University of Texas Student Health and Wellness Center, Denton, Texas, and had been in that position for less than one (1) month.
7. On or about June 19, 2018, through December 12, 2018, while employed as a Licensed Vocational Nurse with the University of Texas Student Health and Wellness Center, Denton, Texas, Respondent inappropriately accessed the electronic medical records of Patient 1088, Patient 1265, Patient 9572, Patient 13774, Patient 24205 and Patient 37918 on multiple occasions, without authorization and without a medical necessity. Respondent's conduct was in violation of the Health Insurance Portability and Accountability Act (HIPAA).
8. On or about November 21, 2018, while employed as a Licensed Vocational Nurse with the University of Texas Student Health and Wellness Center, Denton, Texas, Respondent inappropriately accessed the electronic medical record of co-worker Patient 9672 without authorization and without a medical necessity. Respondent's conduct was in violation of the Health Insurance Portability and Accountability Act (HIPAA).
9. In response to Findings of Fact Numbers Seven (7) and Eight (8), Respondent states it was standard practice for all employees to access patient charts for reasons such as helping each other with documentation and learning new controls and functions in the electronic health records system. Respondent states he was never counseled for the violations and states other employees accessed patient records even though they were not providing medical care. Respondent states the facility continuously violated patient confidentiality with no consequences to other employees and he believes his termination was based off retaliation.

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 §217.11 (1)(A),(1)(B)&(1)(E) and 22 TEX. ADMIN. CODE §217.12 (1)(A),(1)(B),(1)(C)&(4).
4. The evidence received is sufficient cause pursuant to Section 301.452(b)(10)&(13), Texas Occupations Code, to take disciplinary action against Vocational Nurse License Number 322006, heretofore issued to NICHOLAS LUCERO.
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.

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

IT IS THEREFORE AGREED and ORDERED that RESPONDENT SHALL receive the sanction of **WARNING WITH STIPULATIONS AND FINE** in accordance with the terms of this Order.

- A. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.
- B. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" as applicable and RESPONDENT may not work outside the State of Texas in another nurse licensure compact party state using a Texas compact license.

II. COMPLIANCE WITH LAW

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 Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Agreed Order.

III. UNDERSTANDING BOARD ORDERS

Within thirty (30) days of entry of this Order, RESPONDENT must successfully complete the Board's online course, "Understanding Board Orders", which can be accessed on the Board's website from the "Discipline & Complaints" drop-down menu or directly at: <http://www.bon.texas.gov/UnderstandingBoardOrders/index.asp>. Upon successful completion, RESPONDENT must submit the course verification at the conclusion of the course, which automatically transmits the verification to the Board.

IV. 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 effective date of this Order, unless otherwise specifically indicated:**

- A. **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 and video programs will not be approved.
- B. **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.
- C. **The course "Patient Privacy,"** a 5.4 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/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.*

V. MONETARY FINE

RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars (\$500.00) within forty-five (45) days of the effective date of this Order.

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.

VI. EMPLOYMENT REQUIREMENTS

In order to complete the terms of this Order, RESPONDENT must work as a nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for four (4) quarterly periods [one (1) year] of employment. This requirement will not be satisfied until four (4) quarterly periods of employment as a nurse have elapsed. Periods of unemployment or of employment that do not require the use of a registered nurse (RN) or a vocational nurse (LVN) license, as appropriate, will not apply to this period and will not count towards completion of this requirement.

A. Notifying Present and Future Employers: RESPONDENT SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, RESPONDENT SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.

B. Notification of Employment Forms: RESPONDENT SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment"

form to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.

- C. **Indirect Supervision:** RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational 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 of 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.
- D. **Nursing Performance Evaluations:** 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. These reports shall be completed by the individual who supervises the RESPONDENT and these reports shall be submitted by the supervising individual to the office of the Board at the end of each three (3) month quarterly period for four (4) quarters [one (1) year] of employment as a nurse.

VII. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Agreed Order, all encumbrances will be removed from RESPONDENT'S license(s) and/or privilege(s) to practice nursing in the State of Texas and, subject to meeting all existing eligibility requirements in Texas Occupations Code Chapter 304, Article III, 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 Order. I waive representation by counsel. I have reviewed this Order. I neither admit nor deny the violation(s) alleged herein. By my signature on this Order, I agree to the entry of this 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 Texas Board of Nursing and a copy of this Order will be mailed to me once the Order becomes effective. 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 possible revocation of my license(s) and/or privileges to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 9 day of December, 2020



NICHOLAS LUCERO, ~~RESPONDENT~~

Sworn to and subscribed before me this _____ day of _____, 20____.

SEAL _____

Notary Public in and for the State of _____

This letter was just sent to me a few days ago, the date on this letter is 10/14/20, it's now december of 2020.

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 9th day of December, 2020, by NICHOLAS LUCERO, Vocational Nurse License Number 322006, and said Agreed Order is final.

Effective this 21 day of January, 2021.

A handwritten signature in black ink, reading "Katherine A. Thomas". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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