

**In the Matter of  
Permanent Registered Nurse  
License Number 581517  
Issued to MELISSA FENNELL BERRY,  
Respondent**

**§ BEFORE THE TEXAS  
§ BOARD OF NURSING  
§ ELIGIBILITY AND  
§ DISCIPLINARY COMMITTEE**

**ORDER OF THE BOARD**

TO: Melissa Berry  
2708 Chipmunk Rd  
Gilmer, TX 75644

During open meeting held in Austin, Texas, on March 23, 2021, 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 581517, previously issued to MELISSA FENNELL BERRY 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 23<sup>rd</sup> day of March, 2021

TEXAS BOARD OF NURSING

BY: \_\_\_\_\_



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

Attachment: Formal Charges filed January 4, 2021

d17r(2021.01.29)

Re: Permanent Registered Nurse License Number 581517  
Issued to MELISSA FENNELL BERRY  
DEFAULT ORDER - REVOKE

CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of March, 2021, 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,  
Copy Via USPS First Class Mail

Melissa Berry  
2708 Chipmunk Rd  
Gilmer, TX 75644

BY: \_\_\_\_\_



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

<b>In the Matter of</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
<b>Permanent Registered Nurse</b>	<b>§</b>	
<b>License Number 581517</b>	<b>§</b>	
<b>Issued to MELISSA FENNELL BERRY,</b>	<b>§</b>	<b>BOARD OF NURSING</b>
<b>Respondent</b>	<b>§</b>	

### **FORMAL CHARGES**

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, MELISSA FENNELL BERRY, is a Registered Nurse holding license number 581517 which is in current 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 January 25, 2020, Respondent failed to comply with the Agreed Order issued to Respondent on January 24, 2019, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Section III, "REMEDIAL EDUCATION COURSE(S)," Part A, of the Agreed Order which states, in pertinent part:

"...RESPONDENT SHALL successfully complete ...within one (1) year of the effective date of this Order, ... a Board-approved course in Texas nursing jurisprudence and ethics ..."

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.11(11)(B).

#### **CHARGE II.**

On or about January 25, 2020, Respondent failed to comply with the Agreed Order issued to Respondent on January 24, 2019, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Section III, "REMEDIAL EDUCATION COURSE(S)," Part B of the Agreed Order which states, in pertinent part:

"...RESPONDENT SHALL successfully complete ...within one (1) year of the effective date of this Order, ... a Board-approved course in medication administration ..."

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.11(11)(B).

### **CHARGE III.**

On or about January 25, 2020, Respondent failed to comply with the Agreed Order issued to Respondent on January 24, 2019, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Section III, "REMEDIAL EDUCATION COURSE(S)," Part C of the Agreed Order which states, in pertinent part:

"...RESPONDENT SHALL successfully complete ...within one (1) year of the effective date of this Order, ... a Board-approved course in nursing documentation..."

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.11(11)(B).

### **CHARGE IV.**

On or about January 25, 2020, Respondent failed to comply with the Agreed Order issued to Respondent on January 24, 2019, by the Texas Board of Nursing. Noncompliance is the result of Respondent's failure to comply with Section III, "REMEDIAL EDUCATION COURSE(S)," Part D of the Agreed Order which states, in pertinent part:

"...RESPONDENT SHALL successfully complete ...within one (1) year of the effective date of this Order, ... the course 'Sharpening Critical Thinking Skills' ..."

The above action constitutes grounds for disciplinary action in accordance with Section 301.452(b)(1)&(10), Texas Occupations Code, and is a violation of 22 TEX. ADMIN. CODE §217.11(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) and/or privilege(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](http://www.bon.texas.gov).

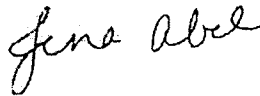
NOTICE IS GIVEN that, based on the Formal Charges, the Board will rely on the Disciplinary Matrix, located at 22 TEX. ADMIN. CODE §213.33(b), which can be found under the "Discipline & Complaints; Board Policies & Guidelines" section of the Board's website, [www.bon.texas.gov](http://www.bon.texas.gov).

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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: Order(s) of the Board dated January 24, 2019.

Filed this 4<sup>th</sup> day of January, 2021.

TEXAS BOARD OF NURSING



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James W. Johnston, General Counsel  
Board Certified - Administrative Law  
Texas Board of Legal Specialization  
State Bar No. 10838300

Jena Abel, Deputy General Counsel  
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P: (512) 305-8657  
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Attachment(s): Order(s) of the Board dated January 24, 2019.

D(2020.12.08)



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

BEFORE THE TEXAS BOARD OF NURSING

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In the Matter of	§	AGREED
Registered Nurse License Number 581517	§	
issued to MELISSA FENNELL BERRY	§	ORDER

On this day the Texas Board of Nursing, hereinafter referred to as the Board, considered the matter of MELISSA FENNELL BERRY, Registered Nurse License Number 581517, 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 Order approved by Katherine A. Thomas, MN, RN, FAAN, Executive Director, on February 17, 2017.

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 an Associate Degree from Northeast Texas Community College, Mount Pleasant, Texas, on May 8, 1992. Respondent was licensed to practice professional nursing in the State of Texas on August 31, 1992.
5. Respondent's nursing employment history includes:

August 1992 - 2012	Unknown
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Respondent's nursing employment history continued:

2013 - 2013	Registered Nurse	Renaissance Hospital Terrell, Texas
2013 - April 2015	Unknown	
May 2015-June 2015	Registered Nurse	Supplemental Health Care, Buffalo, NY on assignment at Texas General Hospital, Grand Prairie, Texas
Unknown - Present	Registered Nurse	Complete Care Tyler, Texas

6. At the time of the initial incident, Respondent was employed as a Registered Nurse with a staffing agency Supplemental Health Care, Buffalo, NY, on temporary assignment at Texas General Hospital, Grand Prairie, Texas.
7. On or about June 13, 2015, Respondent documented that she administered Novolin-R 2 units to Patient Number 10041918 at 2136 and 2151, in excess of the physician's order. Respondent's conduct created an inaccurate medical record and was likely to injure the patients in that subsequent caregivers would rely on her documentation to provide ongoing medical care for the patients.
8. On or about June 13, 2015, and June 14, 2015, Respondent's documentation on Medication Administration Records (MARs) for Patient Number 10041811 for Dilaudid to the patient was inaccurate, in that the pharmacy records for withdrawal from the medication dispensing system at the time of the documented administration did not correspond to the physician order. Respondent's conduct created an inaccurate medical record and was likely to injure the patients in that subsequent caregivers would rely on her documentation to provide ongoing medical care for the patients.
9. On or about June 13, 2015, and June 14, 2015, Respondent failed to document administration Enoxaparin to Patient Number 10041811, as ordered by the physicians. Respondent's conduct was likely to harm the patients in that failure to administer medications as ordered by the physician could result in non-efficacious treatment.
10. On or about June 13, 2015, and June 14, 2015, Respondent failed to accurately document assessments and interventions for Patient Numbers 10041811, 10041918, and 10041939. Respondent's conduct created inaccurate medical records and was likely to injure the patients in that subsequent caregivers would rely on her documentation to provide ongoing medical care for the patients.



11. On or about June 14, 2015, Respondent administered Morphine 4mg syringe from the medication dispensing system for Patient Number 10041918, but administered it to another patient who had requested pain medication. Respondent's conduct created inaccurate medical records and was likely to injure the patients in that subsequent caregivers would rely on her documentation to provide ongoing medical care for the patients.
12. On or about January 18, 2017, Respondent underwent a Psychological Evaluation with Sean G. Connolly, Ph.D., Psychologist, wherein Dr. Connolly advised that the psychological testing does not indicate any abuse of chemicals, dependency on chemicals, or any factor that would predict irresponsibility. Additionally, Dr. Connolly advised that Respondent is fit to practice nursing with skill and safety for patients.
13. In response to Findings of Fact 6-12, Respondent states that she began a temporary contract on 6-4-2015. On June 5, Respondent received brief instruction from an IT employee and worked one shift that same day with a preceptor and received assistance with the EMR. On the morning of June 6, she canceled shifts on 6-6-15 and 6-7-15 because of inadequate orientation, but was assured she would be trained and agreed to return on 6-12-15 and received additional 1.5 hours training and worked a precepted second shift 6-12-15. On 6-13-15 she worked her third shift and requests for assistance were reported to the house supervisor together with medication errors. The Patient who is the subject of Finding No. 7 was not given two doses of insulin; the medication was documented twice in error. The patient who is the subject of Finding No. 8 was given Dilaudid in error after it was DC'ed and Morphine started; Respondent notified the physician and received an Order for the Dilaudid for the patient after the error was realized. In response to Finding No 9, Respondent states that she did not see the order for Levaquin on the chart or MAR. The patient who is the subject of Finding 11 was given pain medication that had been pulled under the wrong patient number; when this was realized by Respondent when she asked another nurse to witness the waste of excess medication, the error was reported to management. At that point Respondent was asked to give report and was not able to complete the documentation in Finding of Fact no. 10. Respondent cooperated fully with the BON investigation and states that she has not encountered these difficulties in her nursing career and is aware of her responsibility to obtain adequate orientation before continuing with any nursing assignment.

#### 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)(C),(1)(D),(1)(M)&(3) and 22 TEX. ADMIN. CODE §217.12(1)(A),(1)(B),(1)(C),(4),(5),(6)(A),(6)(G),(6)(H),(8),(10)(B),(10)(C),(10)(E)&(11)(B).

4. The evidence received is sufficient cause pursuant to Section 301.452(b)(10)&(13), Texas Occupations Code, to take disciplinary action against Registered Nurse License Number 581517, heretofore issued to MELISSA FENNELL BERRY.
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 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. 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.

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

#### **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 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 courses and video programs will not be approved.
- B. A Board-approved course in medication administration with a didactic portion of not less than six (6) hours and a clinical component of not less than twenty-four (24) hours. Both the didactic and clinical components be provided by the same Registered Nurse. The course's content shall include: a review of proper administration procedures for all standard routes; computation of drug dosages; the six (6) rights of medication administration; factors influencing the choice of route; and possible adverse effects resulting from improper administration. The clinical component SHALL focus on tasks of medication administration only. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. Successful completion of this course requires RESPONDENT to successfully complete both the didactic and clinical portions of the course.
- C. A Board-approved course in nursing documentation that shall be a minimum of six (6) hours in length. The course's content shall include: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. Home study courses and video programs will not be approved.
- D. The course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/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. 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. Any quarterly period without continuous employment with the same employer for all three (3) months will not count towards completion of this requirement. 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. **Incident Reporting:** RESPONDENT SHALL CAUSE each employer to immediately submit any and all incident, counseling, variance, unusual occurrence, and medication or other error reports involving RESPONDENT,

as well as documentation of any internal investigations regarding action by RESPONDENT, to the attention of Monitoring at the Board's office.

- 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 nurse who supervises the RESPONDENT and these reports shall be submitted by the supervising nurse 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.

**V. 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 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 when this Order becomes final and the terms of this Order become effective, 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 possible revocation of my license(s) to practice nursing in the State of Texas, as a consequence of my noncompliance.

Signed this 19<sup>th</sup> day of December, 2018  
Melissa Fennell Berry  
MELISSA FENNELL BERRY, Respondent

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SEAL

Notary Public in and for the State of \_\_\_\_\_


Approved as to form and substance.

Elizabeth L. Higginbotham  
Elizabeth L. Higginbotham, Attorney for Respondent

Signed this 19<sup>th</sup> day of December, 2018

WHEREFORE, PREMISES CONSIDERED, the Texas Board of Nursing does hereby ratify and adopt the Agreed Order that was signed on the 19<sup>th</sup> day of December, 2018, by MELISSA FENNELL BERRY, Registered Nurse License Number 581517, and said Order is final.

Effective this 24<sup>th</sup> day of January, 2019.

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