

IN THE MATTER OF PERMANENT
REGISTERED NURSE LICENSE
NUMBER 580254 ISSUED TO
ROSALIE ANN BURKETT

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§
§

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 R. Plummer
Executive Director of the Board

ORDER OF THE BOARD

TO: Rosalie Ann Burkett
23068 Bluegill Lane
Cudjoe Key, FL 33042

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 580254, previously issued to ROSALIE ANN BURKETT, 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 October 28, 2013.

Re: Permanent Registered Nurse License Number 580254
Issued to ROSALIE ANN BURKETT
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

Rosalie Ann Burkett
23068 Bluegill Lane
Cudjoe Key, FL 33042



BY:

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

In the Matter of Permanent
Registered Nurse License
Number 580254 Issued to
ROSALIE ANN BURKETT,
Respondent

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§

BEFORE THE TEXAS

BOARD OF NURSING

FORMAL CHARGES

This is a disciplinary proceeding under Section 301.452(b), Texas Occupations Code. Respondent, ROSALIE ANN BURKETT, is a Registered Nurse holding License Number 580254, 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 27, 2005, 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 received a Reprimand and was placed in Suspension for a period of two (2) years with terms and conditions. A copy of the Final Order, Findings of Fact and Conclusions of Law issued by the Florida Board of Nursing, dated April 27, 2005, 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)(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.

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/discip-matrix.html.

NOTICE IS ALSO GIVEN that Respondent's past disciplinary history, as set out below and described in the Order(s) which is attached and incorporated by reference as part of these charges, will be offered in support of the disposition recommended by staff: Final Order issued by the Florida Board of Nursing, dated April 27, 2005.

Filed this 20th day of October, 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: Final Order issued by the Florida Board of Nursing, dated April 27, 2005.

D/2012.06.19

STATE OF FLORIDA
BOARD OF NURSING

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

Case No.: 2003-20827
License No.: RN 9187379

ROSELIE ANN BUCKETT,

Respondent.

FINAL ORDER

This matter appeared before the Board of Nursing at a duly-noticed public meeting on April 14, 2005 in Ft. Lauderdale, Florida, for a hearing not involving disputed issues of material fact pursuant to Sections 120.569 and 120.57(2), Florida Statutes. Petitioner has filed an Administrative Complaint seeking disciplinary action against the license. A copy of the Administrative Complaint is attached to and made a part of this Final Order. Service of the Administrative Complaint was made upon Respondent by certified mail, return receipt requested. Respondent has not filed an Election of Rights. Petitioner has filed a Motion for Default. Petitioner was represented by Julie Meadows, Assistant General Counsel, Florida Department of Health. Respondent was not present.

FINDINGS OF FACT

Since the licensee has not replied to the Administrative Complaint nor contested the factual allegations, the prosecuting attorney offered the investigative file to prove the facts as alleged. The investigative file was received into evidence and the Board finds the uncontested facts adequately support the allegations. Therefore, the Board adopts as its finding of facts paragraphs 1- of the Administrative Complaint.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, the Board concludes the licensee has violated Section 464.018(1)(i)(j) and (n) and 456.072(1)(q), Florida Statutes.

The Board is empowered by Sections 464.018(2) and 456.072(2), Florida Statutes, to impose a penalty against the licensee. Therefore it is ORDERED that:

The license of ROSELIE ANN BUCKETT is hereby REPRIMANDED.

The licensee must pay an administrative fine of \$500.00 and investigative costs of \$6,202.58 prior to reinstatement of her license. Partial payments shall not be accepted. Payment shall be made to the Board of Nursing and mailed to, DOH-Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Nursing Compliance Officer.

The license of ROSELIE ANN BUCKETT is suspended for two years and thereafter until she personally appears before the

Board and can demonstrate the present ability to engage in the safe practice of nursing. That demonstration shall include at least an in-depth psychological evaluation coordinated through the Intervention Project for Nurses, with an MMPI or other appropriate testing from a psychiatrist, psychologist, or other licensed mental health counselor experienced in the treatment of addiction. The licensee shall supply a copy of this Order to the evaluator. The evaluation must contain evidence that the evaluator knows of the reason for referral. The evaluator must specifically advise this Board that the licensee is presently able to engage in the safe practice of nursing or recommend the conditions under which safe practice could be attained. The licensee must also submit prior to her appearance before the Board a reentry plan, proof of continued treatment and counseling if recommended in the psychological evaluation, and demonstration of two years of documented continuous drug free/alcohol free living. The Board reserves the right to impose reasonable conditions of reinstatement at the time the licensee appears before the Board to demonstrate her present ability to engage in the safe practice of nursing.

Within 30 days, the licensee shall return her license to the board office, 4052 Bald Cypress Way, Bin # C02, Tallahassee, Florida 32399-3252 or shall surrender the license to an Investigator of the Department of Health. The licensee's

employer shall immediately be informed of the suspension in writing from the licensee with a copy to the Board office.

This Final Order shall become effective upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 27 day of June, 2005.

BOARD OF NURSING



Dan Coble, RN, PhD
Executive Director for
PATRICIA DITTMAN, RN, CHAIR

NOTICE OF APPEAL RIGHTS

Pursuant to Section 120.569, Florida Statutes, the parties are hereby notified that they may appeal this Final Order by filing one copy of a notice of appeal with the clerk of the department and by filing a filing fee and one copy of a notice of appeal with the District Court of Appeal within thirty days of the date this Final Order is filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to ROSELIE ANN BUCKETT, 23068 Bluegill Lane, Cudjoe FL 33042 and Jean D'Aprix, IPN P.O. Box 49130, Jacksonville Beach, Florida 32240-9130; by interoffice mail to Lee Ann Gustafson, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050; and Julie Meadows,

Assistant General Counsel, Department of Health, 4052 Bald
Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265 on this 27th
_ day of April, 2005.

Risa Peterson

Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2003-20827

ROSALIE ANN BURKETT, R.N.,

RESPONDENT.

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, Rosalie Ann Burkett, 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 licensed registered nurse (R.N.) in the State of Florida, having been issued license number 9187379.

3. Respondent's address of record is 23068 Bluegill Lane, Cudjoe Key, Florida 33042.

4. On or about October 9, 2002, the nurse manager of the Lower Keys Medical Center (LKMC), where Respondent was employed as a nurse, referred Respondent to the Intervention Project for Nurses (IPN) for suspected diversion of Demerol from the Hospital.

5. IPN is the impaired nurses program for the Board of Nursing, pursuant to Section 456.076, Florida Statutes. IPN is an independent program that 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. Demerol is a Schedule II controlled substance listed in Section 893, Florida Statutes. Demerol is a narcotic analgesic and is indicated for relief of moderate to moderately severe pain. It has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment in the United States. Abuse of Demerol may lead to severe physical and psychological dependence.

7. On or about November 11, 2002, Respondent submitted to an evaluation conducted by Jeffrey Kamlet, M.D., a Board-approved addictionist and treatment provider. According to Dr. Kamlet, Respondent admitted that she had diverted Demerol from her employer for personal use while she was employed by LKMC.

8. On or about December 16, 2002, Respondent entered intensive outpatient treatment at LKMC. A urine drug screen was conducted on the first date of her treatment, and Respondent tested positive for barbiturates. Respondent admitted that she had taken Fioricet, a controlled substance, which she claimed had been prescribed to her. Respondent's treatment team discussed with Respondent the issue of IPN's prohibition of ingesting any mood-altering drugs during treatment, advising her that patients in treatment are not permitted to take such medications.

9. Fioricet contains butalbital, an opioid analgesic, and is a Schedule III controlled substance listed in Section 893, Florida Statutes. A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States. Fioricet is indicated for relief

of moderate to moderately severe pain. Abuse of Fioricet may lead to moderate or low physical dependence or high psychological dependence.

10. On or about December 31, 2002, a second random urine drug screen was conducted which found that Respondent's urine sample was positive for opioids. At that time, Respondent admitted ingesting Lortab, an opioid analgesic and controlled substance, which she claimed had been prescribed to her.

11. Lortab, which contains hydrocodone, is a Schedule II controlled substance under Chapter 893, Florida Statutes. A substance in Schedule II has a high potential for abuse and has a currently accepted, but severely restricted, medical use in treatment. Abuse of this substance may lead to severe psychological or physical dependence.

12. The IPN treatment team discussed with Respondent the prohibition against the use of mood altering drugs during outpatient treatment. However, on or about January 9, 2003, and January 15, 2003, Respondent tested positive for barbiturates and opioids, respectively, both of which are controlled substances listed in Section 893, Florida Statutes. At that time, Respondent denied having ingested any chemical that would produce such drug test results.

13. Based on the four positive drug screen results received during the initial month of Respondent's outpatient treatment, Respondent's treatment team recommended that she enter residential treatment. Respondent requested a second opinion, and on February 4, 2003, she entered Alternatives Treatment, where she completed a recommended inpatient evaluation. The Board-approved evaluator recommended that Respondent return to outpatient treatment and successfully complete intensive outpatient treatment. The evaluator also recommended that upon receipt of any positive drug screens, Respondent should be required to return to residential treatment, and if she is required to use opioids for treatment of polycystic kidney disease, the medication should be obtained only from a chronic pain specialist.

14. On or about March 18, 2003, Respondent successfully completed intensive outpatient treatment and returned to the practice of nursing with a narcotic key restriction. Respondent executed an advocacy contract with IPN, which terms included that Respondent be required to see and be monitored by a chronic pain specialist prior to using any mood-altering medications in order to treat migraine headaches or polycystic kidney disease.

15. On or about May 13, 2003, Respondent provided a urine sample for a random urine drug screen. The sample tested positive for butalbital (described above as a Schedule III controlled substance), and Respondent failed to produce a prescription and legitimate medical reason for using the drug.

16. As a result of the positive drug screen, IPN advised Respondent that she was required to refrain from practicing nursing and would be required to be re-evaluated within a specific time frame. Respondent failed to comply with IPN's directive by refusing to submit to the requisite evaluation.

17. By letter dated July 8, 2003, IPN notified Respondent that her contract with IPN would be terminated unless she engaged in inpatient treatment at one of three facilities by July 18, 2003. Respondent failed to comply with IPN's recommendation.

18. By letter dated July 18, 2003, IPN notified Respondent that it had dismissed her from the IPN program for failure to comply with conditions of her IPN advocacy contract.

19. On or about August 20, 2003, IPN notified the Department in writing of Respondent's failure to comply with IPN's requirements. IPN

recommended that, at a minimum, the Department require Respondent to undergo an evaluation based on her history of chemical abuse and potentially impairing diagnoses of chronic pain with iatrogenic dependence to opiates, butalbital abuse, and a recent positive urine drug screen for butalbital without a prescription.

20. On or about January 21, 2004, the Department compelled Respondent to an examination which was to occur on February 5, 2004, with Richard Seely, M.D. The Department subsequently issued an Amended Order wherein the date of examination with Dr. Seely was changed to March 4, 2004. Respondent was served with the Amended Order Compelling a Medical Examination in person by a Department investigator on March 1, 2004.

21. Respondent responded to this Order Compelling a Medical Examination by providing a letter advising that she was in "complete renal failure," needing dialysis treatment, and that she was unable to travel to Miami for an appointment with Dr. Seely.

22. The Department filed a Petition for Enforcement of Department Order in the Circuit Court of Monroe County, Florida, under case number 2004-CA-326-K, and a hearing was scheduled for June 28, 2004.

23. On June 28, 2004, a hearing was conducted by telephone. Respondent appeared by telephone to present her case.

24. In his Order, the Special Master ordered Respondent to submit to the Department-ordered medical examination within the next 45 days. The Department scheduled an examination for Respondent to take place with Jeffrey Kamlet, M.D., in Miami Beach, Florida, on August 13, 2004. Due to scheduling issues, the appointment was rescheduled to September 1, 2004.

25. On the morning of September 1, 2004, Respondent contacted Dr. Kamlet and advised that she would not be coming to her appointment because of "dialysis." Dr. Kamlet had evaluated Respondent in the past and expressed doubts about her sincerity to the Department, especially considering that the cancellation of the appointment came on the morning of the examination. Dr. Kamlet advised that he had personally confirmed the appointment with Respondent on the evening prior to the scheduled examination. Dr. Kamlet also advised that a dialysis session was a scheduled event that Respondent would have been aware of prior to the time of the missed examination.

26. The Department contacted Respondent and re-advised her that she was compelled by Circuit Court Order to submit to this examination. Respondent stated that she would relinquish her license to practice as a nurse.

27. Since September 1, 2004, Department investigators have been attempting to make contact with Respondent in order to facilitate the relinquishment of her license. Investigators have attempted to contact Respondent by telephone and mail, and Respondent has refused to respond in any way to Department inquiries, and has been avoiding and eluding all contact.

COUNT ONE

28. Petitioner realleges and incorporates paragraphs one (1) through twenty-seven (27) as if fully set forth herein.

29. Section 464.018(1)(n), Florida Statutes (2002, 2003), provides that failing to meet minimal standards of acceptable and prevailing nursing practice constitutes grounds for disciplinary action.

30. Rule 64B9-8.005(2)(k), Florida Administrative Code (F.A.C.), defines failing to meet minimal standards of acceptable and prevailing nursing practice to include, but not be limited to, testing positive for any

drugs under Chapter 893, Florida Statutes, on any drug screen when the nurse does not have a prescription and a legitimate medical reason for using such drug.

31. As detailed above, Respondent failed to meet minimal standards of acceptable and prevailing nursing practice by testing positive for barbiturates and opioids when Respondent did not have a prescription and a legitimate medical reason for using such drugs.

32. Based on the foregoing, Respondent has violated Section 464.204(1)(n), Florida Statutes (2002, 2003), as defined by Rule 64B9-8.005(2)(k), F.A.C., for testing positive on a drug screen for drugs under Section 893, Florida Statutes, when Respondent did not have a prescription and a legitimate medical reason for using such drugs.

COUNT TWO

33. Petitioner realleges and incorporates paragraphs one (1) through twenty-seven (27) as if fully set forth herein.

34. Section 464.018(1)(j), Florida Statutes (2002, 2003, 2004), 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 disciplinary action by the Board of Nursing.

35. In as early as 2002, Respondent was evaluated by a board-approved treatment provider and she consistently continued to have positive drug screens for opioids in violation of her IPN contract. As of the date of this Order, Respondent has not submitted herself to a mental and physical examination as ordered by both the Department and the Circuit Court of Monroe County. Respondent has not complied with IPN's recommendations, and is not being monitored in any way.

36. Based on the foregoing, Respondent violated Section 464.018(1)(j), Florida Statutes (2002, 2003, 2004), by being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, or narcotics or as a result of any mental or physical condition.

COUNT THREE

37. Petitioner realleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein.

38. Section 464.018(1)(i), Florida Statutes (2002), provides that engaging or attempting to engage in the possession, sale, or distribution of

controlled substances as set forth in Chapter 893, Florida Statutes, for any other than legitimate purposes authorized by Chapter 464 constitutes grounds for disciplinary action by the Board of Nursing.

39. Respondent admitted to Dr. Kamlet in November 2002 that she diverted Demerol from her employer.

40. Based on the foregoing, Respondent violated Section 464.018(1)(i), Florida Statutes (2002), by engaging in the possession of controlled substances as set forth in Chapter 893 without a legitimate purpose.

COUNT FOUR

41. Petitioner realleges and incorporates paragraphs one (1) through twenty-seven (27) as if fully set forth herein.

42. Section 456.072(1)(q), Florida Statutes (2004), provides that violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department constitutes grounds for disciplinary actions against a licensed health care practitioner.

43. Respondent is licensed pursuant to Chapter 464, Florida Statutes, and is a health care practitioner as defined in Section 456.001(4), Florida Statutes.

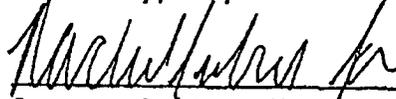
44. As detailed above, Respondent has not submitted herself to a mental and physical examination as ordered by both the Department and the Circuit Court of Monroe County.

45. Based on the foregoing, Respondent violated Section 456.072(1)(q), Florida Statutes (2004), by violating a lawful order of the department or the board.

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 18th day of November, 2004.

John O. Agwunobi, M.D., M.B.A., M.P.H.
Secretary, Department of Health



Joanna C. Hassell
DOH Prosecution Services Unit
4052 Bald Cypress Way, Bin C-65
Tallahassee, Florida 32399-3265
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(850) 414 - 8126 Telephone
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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK Heather Calman
DATE NOV 18 2004

JCH/jch

Reviewed and approved by: JK (initials) 11/3/04 (date)

PCP: 11/17/04

PCP Members: M.G. Herrera, LPD
D. Gimenez, R.D.

Rosalie Ann Burkett, R.N., 2003-20827

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.