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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

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IN THE MATTER OF THE ISSUANCE OF ) MEMORANDUM OF  
A PROBATIONARY LICENSE TO CESAR ) UNDERSTANDING AND ORDER  
E. GARCIA TO PRACTICE AS A REGISTERED )  
NURSE IN THE STATE OF UTAH ) CASE NO. DOPL 2008- 90

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DOPL FM 007 REV 1/25/05

Cesar E. Garcia ("Respondent") submitted an application to the Utah Division of Occupational and Professional Licensing ("Division") for initial licensure as a registered nurse ("RN") in the State of Utah on or about May 16, 2007. On the Qualifying Questionnaire Respondent answered "yes" to questions

REDACTED

As part of Respondent's application process, Respondent was asked to obtain a current psychosexual evaluation, which was completed in August 2007. The following is a summary of the evaluation and recommendations:

- a. Respondent's contact with children should not be limited in any way.
- b. Sexual risk with regard to minors appears to fall within the low range. However, Respondent would be best served to seek employment in contexts that do not routinely focus on children. Occasional direct care would be acceptable.

- c The only concern expressed by the evaluator was Respondent's defensiveness on a number of measures during testing. The evaluator noted "the defensiveness is concerning and more is expected of one who has completed treatment."
- d The evaluator recommended that Respondent undergo brief counseling with a sexual offender treatment provider in order to process these defensive results and motives behind their presentation. Further, it was recommended that Respondent retake the MMPI-2 and Affinity 2.0 after the brief therapy has been completed.

Respondent met with the Board of Nursing ("Board") on or about September 28, 2007. During that meeting, a motion was passed to table Respondent's application until he completes the recommendations from the evaluator, including obtaining additional counseling. On or about January 9, 2008 the Division received documentation from Addiction and Psychological Services Inc. indicating Respondent had completed his brief counseling and was discharged from therapy on December 5, 2007, and appeared to be at low risk for a future offense.

**REDUCED**

The Division and the Board are concerned about Respondent's Respondent and Division, as evidenced by their signatures on this Memorandum of Understanding and Order, agree that Respondent shall be issued a probationary license to practice as a registered nurse valid in Utah only, subject to terms and conditions, which shall be in effect for a period of five years commencing upon the date this Memorandum of Understanding and Order is approved by the Division Director as evidenced by his signature.

- 1 Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a) and (c), and the Division is justified in sanctioning Respondent's license pursuant to Utah Code Ann. § 58-1-401(2). Respondent understands that the issuance of the Order in this matter is disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2).
- 2 Respondent acknowledges that Respondent enters into this Memorandum of Understanding and Order knowingly and voluntarily, and other than what is contained in this Memorandum of Understanding and Order, no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce Respondent to enter into this agreement.
- 3 Respondent understands that Respondent has the right to be represented by an attorney in this matter, and the Respondent has either sought the advice of counsel or knowingly waives Respondent's right to counsel in this matter.
- 4 Respondent acknowledges that this Memorandum of Understanding and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Memorandum of Understanding and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

5. Respondent shall successfully complete and satisfy the following terms and conditions

a Respondent shall meet with the Board within thirty (30) days of the signing of the accompanying Order Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the probationary period Respondent shall meet with the Board or with the Division annually or at such other greater or lesser frequency as the Division may direct

b Failure of Respondent to pay the costs associated with this Memorandum of Understanding and Order constitutes a violation of the Memorandum of Understanding and Order

c All reports and documentation required in this Memorandum of Understanding and Order shall be submitted to the Board on a monthly basis for the first six (6) months of probation If Respondent is in compliance with all terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis for the remainder of probation If Respondent is not in compliance with all terms and conditions of the Order by the end of the first six (6) months of probation, all reports and documentation shall be submitted on a monthly basis until Respondent is in compliance with the Order, after which all reports shall be submitted on a quarterly basis

d Respondent shall complete and submit to the Board continuing self-assessment reports at the frequency described in subparagraph (c) above The self-assessment reports shall be completed on a form prescribed by the Division.

e Respondent shall participate in any therapy the Division and the Board may require Respondent shall authorize all approved therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Board. The therapist must also be directed to submit evaluations to the Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described above Respondent may be subject to re-evaluation upon notice and opportunity to be heard.

f Respondent shall notify any employer and/or school of nursing of Respondent's restricted status and the terms of this agreement. Respondent shall further cause Respondent's employer and/or school of nursing to submit performance evaluations to the Board at the frequency described in subparagraph (c) above. The receipt of an unfavorable report may be considered to be a violation of probation. If Respondent is not employed as a nurse, Respondent shall submit the employer report form on the date it is due and indicate on that form that Respondent's current employment is not in nursing or that Respondent is not currently working.

g. Respondent shall provide to Respondent's employer(s) and/or school of nursing a

copy of this Memorandum of Understanding and Order and cause each employer or school of nursing to acknowledge to the Board in writing, that a copy of this Memorandum of Understanding and Order has been provided to the employer and/or school of nursing

h. Respondent shall not work for a nursing registry, traveling nurse agency, nursing float pool, home health agency, temporary employment agency, school setting, office or clinic of a medical practitioner, or any other practice setting in which nursing supervision is unavailable. Respondent shall not work in a nursing employment context that routinely focuses on children such as pediatrics, however, Respondent may occasionally provide nursing services to pediatric clients provided Respondent is directly supervised.

i. Respondent shall practice only under the on-site supervision of a registered nurse or physician who is licensed in good standing with the Division. The supervising nurse or physician shall be primarily one person who may periodically delegate his or her supervisory responsibilities over Respondent to other qualified personnel.

j. Respondent agrees not to practice nursing in any other state that is a party to the Nurse Licensure Compact without prior authorization from such other party state.

k. Respondent shall notify the Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.

l. If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Memorandum of Understanding and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Memorandum of Understanding and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Memorandum of Understanding and Order.

m. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Board to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

n Respondent shall maintain a current license at all times during the period of this agreement

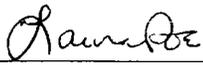
o. Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

p In the event Respondent does not practice as a nurse for a period of sixty (60) days or longer, Respondent shall notify the Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Memorandum of Understanding and Order. It shall be within the discretion of the Board to modify this requirement if Respondent satisfactorily explains to the Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least sixteen (16) hours per week and no more than forty-eight (48) hours per week to be considered "practicing" in Respondent's profession.

- 6 Respondent agrees to abide by all applicable federal and state laws, regulations, rules or orders related to Respondent's practice as a nurse.
7. Respondent understands that the issuance of a license pursuant to this Memorandum of Understanding and Order is a partial denial of licensure, and Respondent hereby waives the right to any administrative review of that partial denial of licensure.
- 8 If Respondent successfully completes the terms of this Memorandum of Understanding and Order, the conditions on Respondent's license as a registered nurse will be lifted and Respondent's license will not be subject to further restriction.
9. If Respondent violates any term or condition of this Memorandum of Understanding and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.
10. The terms and conditions of this Memorandum of Understanding and Order become effective immediately upon the approval of this Memorandum of Understanding and signing of the Order by the Division Director. Respondent must comply with all the terms and conditions of this Memorandum of Understanding and Order immediately after the Division Director signs the Order page of this Memorandum of Understanding and Order. Respondent shall complete all the terms and conditions contained in the Memorandum of Understanding and Order in a timely manner. If a time period for completion of a term or condition is not specifically set forth in this Memorandum of Understanding and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to complete a term or condition in a timely manner shall constitute a violation of the Memorandum of Understanding and Order and may subject Respondent to revocation or other sanctions

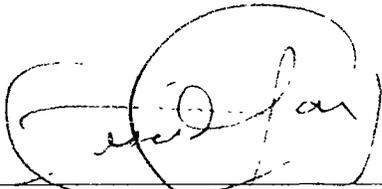
- 11 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe or affect this Memorandum of Understanding and Order.
- 12 Respondent has read each and every paragraph contained in this Memorandum of Understanding and Order. Respondent understands each and every paragraph contained in this Memorandum of Understanding and Order. Respondent has no questions about any paragraph or provision contained in this Memorandum of Understanding and Order.

DIVISION OF OCCUPATIONAL &  
PROFESSIONAL LICENSING

BY   
LAURA POE  
Bureau Manager

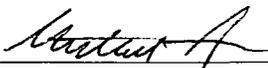
DATE 5-6-08

RESPONDENT

BY   
CESAR E. GARCIA

DATE 5/2/08

MARK L. SHURTLEFF  
ATTORNEY GENERAL

BY:   
L. MITCHELL JONES  
Counsel for the Division

DATE 11 Apr 2008

**ORDER**

THE ABOVE MEMORANDUM OF UNDERSTANDING, in the matter of **CESAR E. GARCIA**, is hereby approved by the Division of Occupational and Professional Licensing. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann § 58-1-401(2). The terms and conditions of the Memorandum of Understanding are incorporated herein and constitute my final Order in this case.

DATED this 7 day of May, 2008

DIVISION OF OCCUPATIONAL AND  
PROFESSIONAL LICENSING

  
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F DAVID STANLEY  
Director