

STATE OF TEXAS

COUNTY OF TRAVIS

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Expert Witness Agreement
Between
The Texas Board of Nursing
And

The Board of Nursing for the State of Texas, hereinafter referred to as the Board, and hereinafter referred to as the Expert, hereby make and enter into this agreement for the mutual consideration set forth below as provided for in the Texas Government Code §2151.005.

I.

The Expert agrees to provide to the Board expert testimony in various disciplinary proceedings brought pursuant to TEX. OCC. CODE §301.452. The Expert will provide such services to the extent specifically requested by the Board on an as needed basis. No provision of this agreement shall be construed as mandating performance under this contract by the Expert, if the Expert is unavailable, unable, or unwilling to perform the service requested.

II.

All information prepared by Expert is the work product of the Board and is subject to disclosure or non-disclosure pursuant to the Texas Rules of Civil Procedure and Texas Rules of Evidence.

III.

The Expert's payment structure shall be as follows:

Records Review and Expert Report Hourly Rate. The hourly rate for the Expert's services shall be three hundred dollars (\$300.00) per hour for records review and preparation of an expert report **per case.***

Fixed Fee for Deposition Preparation shall be one thousand dollars (\$1,000.00) **per case.** This will include review of the file in preparation for the deposition and any conference/s in person or by phone with Board Staff in preparation of giving deposition testimony.

Hourly Rate for Deposition Testimony. The hourly rate for the Expert's services shall be three hundred dollars (\$300.00) per hour for deposition testimony in Expert's local area **per case.**

Fixed Fee for Trial Preparation shall be one thousand dollars (\$1,000.00) **per case.** This will include review of the file in preparation for testifying and any conference/s in person or by phone with Board Staff in preparation for trial testimony at the State Office of Administrative Hearings.

Fixed Fee for Review of Depositions and Expert Reports. Expert shall be paid a fixed fee of five hundred dollars (\$500.00) per expert report and/or deposition reviewed (up to 20 pages) and one thousand dollars (\$1,000.00) per expert report and/or deposition reviewed (21 pages or longer) **per case**.

Fixed Fee for Trial Testimony. Expert shall be paid a fixed fee of one thousand dollars (\$1,000.00) per day for live hearing trial testimony (either in person or by phone) at the State Office of Administrative Hearings **per case**. Expert shall be paid a fixed fee of **two hundred fifty dollars (\$250.00) per day** for any day the Expert is scheduled to be available, either in person or telephonically, but is not physically present at the hearing/trial, and is not called to provide hearing/trial testimony.

Fixed Formal Hearing/Trial Cancellation Fee.

- A. Should a scheduled Formal Hearing/Trial before the State Office of Administrative Hearings be cancelled or continued, less than seven (7) calendar days prior to the date of the hearing/trial, Expert shall be paid a fixed fee of seven hundred dollars (\$700.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or two thousand two hundred dollars (\$2,100.00).
- B. Should a scheduled Formal Hearing/Trial before the State Office of Administrative Hearings be cancelled or continued, less than fourteen (14) calendar days prior to the date of the hearing/trial, Expert shall be paid a fixed fee of four hundred dollars (\$400.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or one thousand five hundred dollars (\$1,200.00). Each day Expert receives the Fixed Formal Hearing/Trial Cancellation Fee, for cancelled or continued hearings/trials less than fourteen (14) calendar days prior to the date of the hearing/trial, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings/trials, depositions, and hearing/trial preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendars prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing/Trial Cancellation Fee. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing/Trial Cancellation Fee, Expert will receive the Fixed Formal Hearing/Trial Cancellation Fee.
- C. Should a scheduled Formal Hearing/Trial before the State Office of Administrative Hearings be cancelled or continued, less than twenty-one (21) calendar days prior to the date of the hearing/trial, Expert shall be paid a fixed fee of two hundred dollars (\$200.00) for each scheduled day of in-person testimony and/or in-person availability at the State Office of Administrative Hearings, not to exceed three (3) days or six hundred dollars (\$600.00). Each day Expert receives the Fixed Formal Hearing/Trial Cancellation Fee, for cancelled or continued hearings/trials less than twenty-one (21) calendar days prior to the date of the hearing/trial, Expert will remain available for any Board of Nursing litigation service, including, but not limited to: rescheduled formal hearings/trials, depositions, and hearing/trial

preparation. Any and all substitute litigation services under this subparagraph must be scheduled no later than fourteen (14) calendars prior to the date of the substitute litigation service. Further, Expert will be paid, per day of service, for any and all substitute litigation services in accordance with the terms of this expert witness agreement, only if the amount of payment exceeds the applicable Fixed Formal Hearing/Trial Cancellation Fee. If the amount of payment for the substitute legal service, per this expert witness agreement, does not equal or exceed the Fixed Formal Hearing/Trial Cancellation Fee, Expert will receive the Fixed Formal Hearing/Trial Cancellation Fee.

* "Per case" refers to each disciplinary proceeding or contested case proceeding brought against an individual for alleged violations of the Nursing Practice Act. Most cases are distinguished by individual Respondent or State Office of Administrative Hearings (SOAH) docketing number.

Expenses. Travel and per diem expenses, if any, shall be reimbursed according to State of Texas Comptroller Guidelines.

The Expert agrees to keep documentation and receipts related to his performance under this contract. The parties stipulate and agree that the total amount due to Expert for all services performed under this Agreement shall be the amount set forth in this Agreement. The parties further acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to the Board during this biennium.

IV.

Payment will be made within thirty (30) days of services rendered and after Expert has submitted to the Board a signed invoice attesting to the days and hours worked, the subject matter of the work, and expenses incurred. Expenses are to be itemized and copies of all available receipts provided.

V.

The offer of this Agreement is an official act of the Board or its designee, Katherine Thomas, MN, RN, FAAN, Executive Director, who has been empowered and authorized to act on behalf of the Board in respect to this agreement.

VI.

The term of this agreement shall become effective upon the signature of the Executive Director of the Board, Katherine Thomas, MN, RN, FAAN, and continue until August 31, 2015. This agreement may be canceled at any time by mutual consent. In addition, either party to this agreement may cancel it by the giving of at least thirty days notice in writing to the other party whereupon this agreement will be canceled upon the expiration of the thirty day (or longer) period after receipt of the notice of cancellation. Upon mutual agreement of the parties, this contract may be extended for up to one year on August 31, 2015.

VII.

The Expert is not an employee of the Board, and as such is responsible for payment of any federal taxes to be paid to the federal government attributable to the payments made under this agreement, and is, furthermore, not eligible for any fringe benefits due state employees.

VIII.

The Expert warrants that, to the best of his knowledge, there are no state or federal laws which would prevent him from entering into this agreement.

IX.

It is agreed and understood that the Expert acts in the capacity of an independent contractor under this Agreement. Expert will indemnify and hold the State harmless from and against all claims arising out of Expert's performance including, but not limited to, the use of automobiles and/or other means of transportation.

X.

The dispute resolution process provided for in chapter 2260 of the Texas Government Code must be used by the Board and Expert to attempt to resolve all disputes arising under this Agreement.

XI.

In accordance with Section 403.055(h) of the Texas Government Code, the Expert agrees that any payments due to the Expert under this contract will be first applied toward any debt and/or back taxes the Expert owes the State of Texas. Payments will be so applied until such debts and taxes are paid in full. This clause does not apply if federal law requires payment to be made to the Expert for the services, and may not apply if federal law conditions the receipt of the money for this service to the State on the basis of payment being made to the Expert.

XII.

It is agreed and understood that the Agreement may be amended only upon written agreement between the Board and Expert, but in no case will the Agreement be amended so as to make it conflict with the laws of the State of Texas.

XIII.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit brought for any breach of the Agreement is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

XIV.

The Expert agrees to keep confidential and privileged and protected from disclosure to all others, except to the limited extent of prior written consent of the Board or written order of the court in a lawsuit, and will not share any such information to the detriment of the Board or any officer of agency of the State of Texas: (1) all communications between the Expert and the Board; (2) all information that may identify or tend to identify any victim or recipient of victim services. No information in whatever form prepared by the Expert for the Board pursuant to this Agreement shall be disclosed by the Expert without the prior written approval of the Board or as required in giving testimony either by deposition and/or live testimony at hearing. All files, records, reports, data, and other documents obtained, used, prepared, or otherwise developed by the Expert in the performance of the scope of work authorized by this Agreement shall be the property of the Board, and shall be delivered to the Board within ten (10) business days upon written request of the Board.

This agreement is full and complete on its face, has been read by all parties, and no terms or conditions exist outside those acknowledged and accepted herein by the parties whose signatures appear below.

For the faithful performance of the terms of this agreement, the parties hereto execute this agreement in their respective capabilities on the dates indicated.

TEXAS BOARD OF NURSING

EXPERT

By:  By:
Katherine Thomas, MN, RN, FAAN
Executive Director for the
Texas Board of Nursing
333 Guadalupe Street
Suite 3-460
Austin, TX 78701
P: (512) 305-6811
F: (512) 305-8101

Date: 10/15/14

Date: 10/9/14

STATE OF TEXAS

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COUNTY OF TRAVIS

ADDENDUM

This will serve as an agreement to extend the Expert Witness Agreement between the Texas Board of Nursing and _____ entered on October 15, 2014, for an additional year ending on August 31, 2016.

TEXAS BOARD OF NURSING

EXPERT

By: 
Katherine A. Thomas, MN, RN, FAAN
Executive Director for the
Texas Board of Nursing
333 Guadalupe Street
Suite 3-460
Austin, TX 78701
P: (512) 305-6811
F: (512) 305-8101

By: _____
Date: 9/23/15

Date: 9/25/15