DOCKET NUMBER 507-24-01476

IN THE MATTER OF	**§**	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	**§**	
NUMBER LVN 1031788,	**§**	**OF**
ISSUED TO	**§**	
FOLASADE MARGARET AKINROLABU	**§**	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: ADIAH A. OREYOMI
1400 BROADFIELD BLVD, SUITE 200
HOUSTON, TEXAS 77084

SHELLY M. DOGGETT
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

At the regularly scheduled public meeting on January 30, 2025, the Texas Board of Nursing (Board) considered the following items: the Proposal for Decision (PFD) regarding the above cited matter; Staff's recommendation to the Board regarding the PFD and order; and Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. The ALJ issued an Exception Letter which denied any requested exceptions.

The Board, after review and due consideration of the PFD; Staff's recommendations; and the recommendations made by the Respondent, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Pursuant to Tex. Occ. Code. §301.459 (a-1), an Administrative Law Judge may make a recommendation regarding an appropriate action or sanction. The Board, however, has the sole authority and discretion to determine the appropriate action or sanction.

A licensed vocational nurse who is not properly trained or educated has the potential to harm a patient.[1] Respondent did not successfully complete an approved program of vocational nursing.[2] Respondent did not receive adequate clinical education in the required subject areas to be licensed as a vocational nurse in Texas.[3] The Respondent cannot be properly certified as a graduate of an approved nursing program as the institution that she attended, in Texas, because it was not approved by the Board.[4]

The Board agrees with the ALJ's finding that Respondent's diploma was unlawfully issued.[5] Nursing practice under an unlawfully issued diploma is prohibited by the Nursing Practice Act.[6] If the Respondent continued to practice under her current credentials, she would continue to violate Tex. Occ. Code § 301.451(3)(B), and by extension, Tex. Occ. Code § 301.452(b)(1). For this reason, the Board agrees with the ALJ's recommended sanction of revocation.

IT IS, THEREFORE, ORDERED THAT Vocational Nurse License Number 1031788, previously issued to FOLASADE MARGARET AKINROLABU, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

Entered this 30th day of January, 2025.

TEXAS BOARD OF NURSING

Kristin K. Benton, DNP, RN

Kristin K. Benton, DNP, RN
EXECUTIVE DIRECTOR FOR THE BOARD

Attachments: Proposal for Decision; Docket No. 507-24-01476 (September 24, 2024), Exceptions Letter issued October 28, 2024.

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[1] Finding of Fact 33.
[2] Finding of Fact 27, 30, 31, and 32.
[3] Finding of Fact 32.
[4] Finding of Fact 30.
[5] Conclusion of Law 9.
[6] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 24, 2024

Ernest Garcia
Assistant Attorney General
Office of Attorney General

VIA EFILE TEXAS

Folasade M. Akinrolabu
c/o Adiah A. Oreyomi

VIA EFILE TEXAS

RE: SOAH Docket No. 507-24-01476; *Texas Board of Nursing v. Folasade Margaret Akinrolabu*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

SOAH Docket No. 507-24-01476 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
FOLASADE MARGARET AKINROLABU,
RESPONDENT

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SOAH Docket No. 507-24-01476 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
FOLASADE MARGARET AKINROLABU,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke and deny the renewal of the Licensed Vocational Nurse (LVN) credential held by Folasade Margaret Akinrolabu (Respondent) based on allegations that Respondent fraudulently obtained her license, diploma, or transcript; practiced under an unlawfully or fraudulently issued license, diploma, or transcript; lacked the requisite education; and engaged in unprofessional conduct. The Administrative Law Judge (ALJ) finds that Respondent did not commit fraud but recommends the Board revoke Respondent's license and deny Respondent's renewal application because

Respondent's transcript and license were issued unlawfully, she did not obtain the requisite education for licensure, and she engaged in unprofessional conduct.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

State Office of Administrative hearings (SOAH) ALJ Shelly M. Doggett convened a hearing on the merits via Zoom videoconference on April 18, 2024. Assistant Attorney General Ernest Garcia represented Staff, and attorney Adiah A. Oreyomi represented Respondent. Pursuant to Order No. 6, the record closed on August 1, 2024, following the filing of admitted exhibits and written closing statements. Matters of notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law.

II. BACKGROUND

This case stems from an investigation of a fraudulent nursing diploma scheme, known as "Operation Nightingale," by the U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Department of Health and Human Services Commission Office of Inspector General (HHS-OIG). The following schools or programs, among others, were implicated by this investigation:

- Quisqueya School of Nursing, LLC[1] and Quisqueya Health Care Academy, LLC (the Quisqueya Schools or Quisqueya),[2]
- Nursing Bridges Healthcare Institute (Nursing Bridges),

[1] This school was formerly known and did business as Sunshine Academy.

[2] During the hearing, witnesses and attorneys would sometimes make distinctions between the two Quisqueya entities and sometimes lump them together. The PFD will use specific names or the collective to reflect the evidence and arguments as they were presented or as otherwise necessary. References to the individual schools will drop the "LLC" from the names.

- Sacred Heart International Institute, Inc. (Sacred Heart), and
- Jean's NCLEX Review.

Respondent's educational background involved these programs, as she obtained a degree from the Quisqueya School of Nursing, following attendance at a Nursing Bridges program in Houston, Texas. She also understood that Sacred Heart and Jean's NCLEX Review were affiliated with Quisqueya and Nursing Bridges. In March 2021, Respondent applied for her Texas license by endorsement, and the Board granted her license in April 2021. When the results of the Operation Nightingale investigation were made public in 2023, Staff issued Formal Charges against Respondent, seeking discipline for her involvement with the implicated nursing programs.

After Respondent applied to renew her license on April 6, 2023, the Board's Executive Director denied Respondent's renewal request,[3] and Respondent timely appealed to SOAH.[4] Staff ultimately filed First Amended Formal Charges alleging that (1) Respondent obtained her license through fraudulent means by purchasing a fraudulent diploma or transcript; (2) Respondent made misrepresentations on her endorsement and renewal applications to mislead the Board to believe she was properly certified in Florida, and engaged in conduct that may endanger a client's life, health, or safety; (3) Respondent was prohibited from practicing nursing because her license and diploma were obtained or issued unlawfully; and (4) Respondent cannot be certified as a graduate of a nursing program because she did not graduate

[3] Staff Ex. 17 at 501-03.

[4] Staff Ex. 17 at 504-05.

from an approved school and did not receive education substantially equivalent to a Texas nursing education. According to Staff, these grounds give rise to disciplinary action, and further authorize denying Respondent's renewal application.

III. APPLICABLE LAW[5]

Pursuant to the Texas Nursing Practice Act (Act), the Board is responsible for regulating nurses.[6] Each applicant for a vocational nurse license must submit to the Board a sworn application that demonstrates the applicant's qualifications, accompanied by evidence that the applicant has, among other things, successfully completed an approved nursing program.[7] A person may not sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record, nor may they assist another person in doing so.[8] In addition, a person may not practice nursing under a diploma, license, or record that was obtained unlawfully or fraudulently or that was signed or issued unlawfully or under false representation.[9]

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[5] For purposes of this PFD, citations to licensing requirements will be to the rules in effect at the time of Respondent's applications and licensing (March and April 2021), unless otherwise specified. *See* Tex. Occ. Code § 301.260(a)(2). The Board's rules at 22 Texas Administrative Code chapters 211 to 228 are hereinafter referred and cited to as "Rule _____."

[6] Tex. Occ. Code ch. 301.

[7] Tex. Occ. Code § 301.252(a).

[8] Tex. Occ. Code § 301.451(1)-(2).

[9] Tex. Occ. Code § 301.451(3)(A)-(B).

A. LICENSING REQUIREMENTS

In this case, Respondent first obtained a license in Florida and then applied for her license by endorsement. A person licensed in another state may qualify for a temporary license by endorsement in Texas by submitting proof of initial licensing by examination and evidence that the person "possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state."[10] A person who holds a temporary license may obtain a permanent license if she "verifies [her] academic and professional credentials" and "satisfies any other requirement established by statute."[11] At the relevant times in 2021, Rule 217.5(a)(1) specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program" and "practiced nursing in another state within the four years immediately preceding" the request for licensure."[12]

An approved nursing education program means a program (i) approved by the Board; (ii) accredited by a national nursing accreditation agency the Board has

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[10] Tex. Occ. Code § 301.260(a)(2).

[11] Tex. Occ. Code § 301.260(b).

[12] Rule 217.5(a)(1) was amended in 2022 to require either "[g]raduation from an approved Texas nursing education program or a program with substantially equivalent education standards to a Texas approved nursing program[.]" *See* 47 Tex. Reg. 6581 (Oct. 7, 2022) (adopting the rule as produced in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)). In Texas Register comments justifying the 2022 amendment, the Board stated the amendment was necessary "to clarify" that February 2018 rule amendments regarding substantially equivalent education standards "apply not only to applicants for initial licensure by examination, but also to applicants for initial licensure by endorsement." Clarification was needed, the Board explained, because substantially equivalent education standards were originally addressed only in Rule 217.2, which contains requirements applicable to initial licensure by examination, and were not expressly included in Rule 217.5, which contains requirements applicable to initial licensure by endorsement. The Board added, "Even though the amendments that were adopted in February 2018 also apply to applicants for licensure by endorsement, they were not also placed in [Rule] 217.5 when the Board originally adopted them in 2018." 47 Tex. Reg. 6581.

determined has acceptable standards; or (iii) approved by the state board of nursing of another state and the Board.[13] To be approved by the Board to operate a Texas-based program, a vocational nursing education program must be licensed by the Texas Workforce Commission (TWC) or the Texas Higher Education Coordinating Board, as applicable, and the program's proposal must be approved by the Board.[14] If the governing entity of a program has vocational nursing programs in other jurisdictions (including, for example, a Florida-approved school that seeks to operate a nursing program in Texas), the Texas-based program must still be approved by the Board.[15] A person may not be certified as a graduate of a nursing school or educational program "unless the person has completed the requirements of the prescribed course of study, including clinical practice . . . ."[16]

A vocational nursing education program operated in another state may be deemed to have "substantially equivalent education standards" to a Texas-approved program for purposes of applicants for initial licensure by examination:

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[13] Tex. Occ. Code § 301.157(d). In addition, the Board:

> may recognize and accept as approved under this section a school of nursing or education program operated in another state and approved by a state board of nursing or other regulatory body of that state. The [B]oard shall adopt rules to ensure that the other state's standards are substantially equivalent to the [B]oard's standards. The [B]oard by rule shall develop a process for students enrolled in a school of nursing or educational program operated in another state that does not meet standards substantially equivalent to the [B]oard's standards to apply for an initial license under this chapter.

Tex. Occ. Code § 301.157(d-4).

[14] Rule 214.3(a)(1), (2)(B).

[15] *See* Rule 214.3(a)(1), (2)(B) (requiring governing entities with programs in other jurisdictions to include additional information with their program proposal).

[16] Tex. Occ. Code § 301.157(d).

(i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical nursing program of study that awards a vocational/practical nursing certificate, diploma, or degree upon completion;

(ii) the program's nursing courses include didactic and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iii) the program includes support courses providing a sound foundation for nursing education for the level of preparation.[17]

B. DISCIPLINE

A person is subject to denial of a nursing license, denial of license renewal, or disciplinary action by the Board for:

- a violation of the Act, a Board rule or regulation, or an order issued under the Act;
- fraud or deceit in procuring or attempting to procure a license to practice vocational nursing; and
- using a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered.[18]

Rule 217.12, meanwhile, defines categories of "unprofessional conduct" that the Board believes are likely to deceive, defraud, or injure, and is intended to protect

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[17] Rule 217.2(a)(4)(B). As of 2022, these requirements were included in Rule 217.5(a)(1)(B) for applicants for licensure by endorsement.

[18] Tex. Occ. Code §§ 301.452(b)(1), (2), (5), .453(a).

clients and the public from incompetent or illegal conduct.[19] Actual injury to a client need not be established to demonstrate an unprofessional conduct violation.[20] Staff alleges that Respondent engaged in the following categories of unprofessional conduct:

- Conduct that may endanger a client's life, health, or safety;
- Providing information which was false, deceptive, or misleading in connection with the practice of nursing; and
- Failing to answer specific questions or providing false or misleading answers in a licensure or employment matter that could reasonably affect the decision to license, employ, certify, or otherwise utilize a nurse.[21]

When a nurse violates the Act or Board rules, the Board is required to impose a disciplinary sanction, which can range from remedial education to license revocation.[22] The Board has adopted a matrix (Matrix), which categorizes violations into tiers and sanction levels based on the seriousness of the offense and risk of harm to patients or the public, to be used in determining the appropriate disciplinary action.[23] When deciding the degree of sanction to be imposed within the authorized range, the Board shall consider: (1) whether the person is being disciplined for multiple violations or has previously been the subject of disciplinary action by the

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[19] Rule 217.12. A person is also subject to disciplinary action by the Board pursuant to Act section 301.452(b)(10) for engaging in unprofessional conduct in the practice of nursing. Tex. Occ. Code § 301.452(b)(10). Despite alleging that Respondent violated Rule 217.12, Staff's First Amended Formal Charges failed to cite the Act's corresponding disciplinary provision and, therefore, waived it. *See* Staff's First Am. Formal Charges (filed April 5, 2024).

[20] Rule 217.12.

[21] Rule 217.12(4), (6)(H), (I).

[22] Tex. Occ. Code § 301.453; Rule 213.33(e).

[23] Rule 213.33(b).

Board and has previously complied with applicable law; (2) the seriousness of the violation; (3) the threat to public safety; and (4) any other aggravating or mitigating factors in the Matrix and Board rules.[24]

The standard of proof is a preponderance of the evidence.[25] Staff has the burden of proving its allegations, and Respondent has the burden of proving any mitigating factors.[26]

IV. EVIDENCE

Staff called Sherri Sutton-Johnson of the Florida Board of Nursing (Florida Board), Danielle Green from the Board, and Donna Carlin, a Board consultant designated as an expert on nursing education standards in Texas. Respondent also testified on her own behalf. The ALJ admitted 16 of Staff's exhibits[27] and eight of Respondent's exhibits.[28]

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[24] Tex. Occ. Code § 301.4531(b); Rule 213.33(b), (c).

[25] *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

[26] 1 Tex. Admin. Code § 155.427.

[27] Staff Exhibits 1-2, 6, 8-12, 17-21, 23, and 25, were offered by Staff and preadmitted by agreement. During the hearing, Respondent also offered Staff Exhibit 3, which was admitted without objection.

[28] Respondent Exhibits 1, 3-5, 6 (subsequently corrected), and 7-9 were offered by Respondent and pre-admitted by agreement. Respondent filed her admitted exhibits after the hearing but did not separately label each exhibit and included some incorrect exhibits numbers (e.g., Respondent labeled Respondent Exhibit 9 as Exhibit 7). Respondent's admitted exhibits, therefore, are specified here for clarity of the record: Respondent Ex. 1 (Akinrolabu Sacred Heart acceptance letter, RES 0001); Respondent Ex. 3 (emails from instructors and school administration at Nursing Bridges/Sacred Heart, RES 0003-31); Respondent Ex. 4 (Nursing Bridges/Sacred Heart syllabi, RES 0032-76); Respondent Ex. 5 (Board licensing verifications, RES 77-83); Respondent Ex. 6 (Frequently Asked Questions regarding "Clinical Experiences" from the Board website, RES 0084-86); Respondent Ex. 7 ("Optimal Clinical Instruction in Nursing Education Programs: Recommendations From the Field," RES 0089-95); Respondent Ex. 8 (2019 Nursing Education Program Information Survey: Characteristics of Professional Nursing Programs, RES 0096-102); Respondent Ex. 9 (PowerPoints and other documents from Nursing Bridges/Sacred Heart courses, RES 0103-205).

A. DOCUMENTARY EVIDENCE SUMMARY

On March 8, 2021, Respondent submitted to the Board an application for LVN licensure by endorsement.[29] Under education history, Respondent stated that she obtained her initial vocational/practical nursing education and nursing certificate from the Quisqueya School of Nursing in Boynton Beach, Florida, which was "closed," and that she graduated on December 13, 2019.[30] Respondent's application also represented that she passed the Practical Nursing National Council Licensure Examination (NCLEX-PN) exam on March 2, 2021,[31] after which she was licensed as a practical nurse (LPN) in Florida.[32] The Board issued Respondent license number 1031788 on April 12, 2021.[33]

The Quisqueya Schools were approved by the Florida Board and Florida Commission on Independent Education (FCIE) as in-person nursing education programs; they were not approved for online instruction or online clinical instruction.[34] The Quisqueya Schools voluntarily closed on December 19, 2019, and were not approved by the Florida Board to admit new students after August 3, 2018.[35]

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[29] Staff Ex. 11.

[30] Staff Ex. 11 at 78. Respondent also declared Texas as her primary state of residence. Staff Ex. 11 at 77.

[31] Staff Ex. 11 at 78. The NCLEX-PN is the nationwide standardized test for vocational nurses administered by the National Council of State Boards of Nursing (NCSBN).

[32] Staff Ex. 11 at 78-79. Respondent obtained her LPN credential in Florida on March 3, 2021. Staff Ex. 11 at 84. An LPN in Florida is the equivalent to an LVN in Texas. For ease of reading, this PFD will occasionally use the term LVN in place of practical nurse.

[33] Staff Ex. 20 at 1063. Staff Exhibits 17 and 20 include sub-numbered exhibits. To avoid confusion, citations will be only to the main exhibit number and page number, without reference to sub-numbered documents.

[34] Staff Ex. 17 at 342-44, 347-48, 459, 479, 507-08, 511, 531.

[35] Staff Ex. 17 at 507-08.

According to program outlines for the Quisqueya Schools, which were approved by the FCIE, both were approved to provide 12-month, "campus" practical nursing diploma programs.[36] The program outlines do not check any boxes indicating that program delivery will occur online, through correspondence, or through other methods.[37] Students were required to complete 1,350 hours of training consisting of 562 theory hours and 788 externship hours with no lab hours.[38] The cost of each program, including tuition and fees, books and supplies, and entrance exam fees, is listed as $12,150.[39]

Sacred Heart was also an approved practical nursing diploma program in Florida.[40] Sacred Heart voluntarily closed on June 2, 2021, though its last students were expected to graduate in August of that year.[41] According to its FCIE-approved program outline, Sacred Heart was a 12-month "campus" program not authorized deliver the course online or through correspondence, and the total program cost $10,829.[42] The program outline required students to complete 1,350 hours, of which 675 hours were theory hours, 20 hours were lab hours, and 655 hours were externship hours.[43]

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[36] Staff Ex. 17 at 342-44, 347-48, 459, 479, 507-08, 511, 531.

[37] Staff Ex. 17 at 459, 479, 511, 531.

[38] Staff Ex. 17 at 459, 479, 511, 531.

[39] Staff Ex. 17 at 459, 479, 511, 531.

[40] Staff Ex. 17 at 508-09, 559.

[41] Staff Ex. 17 at 508-09.

[42] Staff Ex. 17 at 508-09, 559.

[43] Staff Ex. 17 at 559. The record does not contain any approved program outlines for Nursing Bridges or Jean's NCLEX Review.

By January 2023, the DOJ and HHS-OIG began publicizing a multi-state law enforcement action, known as "Operation Nightingale," to apprehend individuals involved in a purported wire fraud scheme to sell fraudulent nursing degree diplomas and transcripts obtained from accredited Florida-based nursing schools.[44] During the investigation, Johanah Napoleon, the Quisqueya Schools's owner, prepared two affidavits admitting that she issued transcripts and diplomas to individuals who did not successfully complete the requirements of nursing programs approved by the Florida Board and FCIE.[45] In one affidavit, Ms. Napoleon provided two lists of individuals: (1) those who she believed successfully completed approved program requirements and (2) those who she believed illegitimately received a diploma, degree, or transcript.[46] Respondent's name appeared on the list of those who, purportedly, illegitimately received a diploma, degree, or transcript.[47]

Ms. Napoleon was criminally indicted and ultimately pleaded guilty to conspiracy to commit health care fraud and wire fraud.[48] In addition, Gail Russ—Quisqueya's dean and director—was indicted as a result of Operation Nightingale for nursing degrees issued by Quisqueya Health Care Academy. Others, including

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[44] *See* Staff Ex. 17 at 202-12. The NCSBN also issued a statement regarding Operation Nightingale indicating that it was working with federal and state authorities to identify and monitor individuals who allegedly provided illegitimate transcripts and credentials, and that nursing regulatory bodies in affected states were investigating individual cases in their states. Staff Ex. 17 at 213-14.

[45] Staff Ex. 17 at 341-482. Ms. Napoleon was criminally indicted and ultimately pleaded guilty to conspiracy to commit health care fraud and wire fraud. Staff Ex. 17 at 139-67, 563-70.

[46] Staff Ex. 17 at 344-45, 347-48. Ms. Napoleon concluded they were illegitimately issued because the individual either paid money in exchange for fake diplomas, degrees, or transcripts, or failed to complete the required hours of instruction, including clinical instruction, for graduation from the Quisqueya Schools.

[47] Staff Ex. 17 at 348, 352, 356.

[48] Staff Ex. 17 at 139-67, 563-70.

Ludnie Jean,[49] Simon Itaman, Anna Itaman, and Charles Etienne,[50] were indicted for their role in issuing nursing degrees at Sacred Heart.[51]

B. TESTIMONY OF MS. SUTTON-JOHNSON

Ms. Sutton-Johnson is the Florida Board's Education Unit Director. She testified that her unit regulates and approves applications for prelicensure nursing education programs, including practical nursing programs, for statutory compliance, and that she has personal knowledge of the status of nursing programs in Florida.

According to Ms. Sutton-Johnson, the Florida Board previously approved the Quisqueya Health Care Academy nursing school to provide practical nursing education in Florida. She testified that the FCIE, which licenses nursing schools in the state, approved a request to change the school's name from Sunshine Academy to Quisqueya Health Care Academy, though she noted that school representatives also used the name Quisqueya School of Nursing interchangeably in their documentation and correspondence. In July 2018, the Florida Board received a closure notification from Quisqueya stating that the program was voluntarily closing, that enrollment had ceased, and that the program had prepared a "teach out" plan for students that were already enrolled.[52] She testified that the correspondence listed

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[49] Ludnie Jean is associated with Jean's NCLEX Review.

[50] Staff witness, Ms. Green, described Simon Itaman and Anna Itaman (also referred to as Honorata Itaman) as the principals and/or owners of Nursing Bridges and Charles Etienne as the principal and/or owner of Sacred Heart.

[51] Staff Ex. 17 at 168-208.

[52] Ms. Sutton-Johnson testified that Florida law authorizes closed or terminated programs to "teach out" students. The programs are required to submit a teach out plan to the Florida Board within 30 days of the effective or identified closure date indicating whether the program will assist students to find another program of if the program will "teach out" the students so that they can complete the program.

March 2019 as the anticipated graduation date for the last cohort of students in the program, though a subsequent notification from the school revised the program's effective closure date to December 19, 2019.[53] Based on this correspondence, Ms. Sutton-Johnson stated that her data system indicated Quisqueya was set to close and the program was not authorized to admit or transfer in new students after August 3, 2018.

In addition to not being approved for online instruction,[54] Ms. Sutton-Johnson testified that Quisqueya was never approved to provide classroom instruction in Texas. She stated the same was true for Nursing Bridges, which had been approved by the Florida Board to provide practical/vocational nursing education in Florida. Per Ms. Sutton-Johnson, the Florida Board does not have authority to authorize schools to provide education classes to students outside the state of Florida and does not regulate distance education programs.

Regarding the gap between Respondent's licensure date and Quisqueya's closure, Ms. Sutton-Johnson stated that students are not required to test immediately after graduating from a nursing program and that the school's NCLEX code remains active for three years following closure. Consequently, there may be a lag between a student's graduation date and initial testing and licensure date. In addition, Ms. Sutton-Johnson testified that, while program representatives should communicate any closures to their students, the Florida Board takes closure actions at public meetings with notice, agenda, and minutes posted on the Board's website.

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[53] Staff Ex. 17 at 507.

[54] Staff Ex. 17 at 507.

She stated that the Florida Board's website maintains a list of active nursing programs, which is updated every 24 hours, and that Quisqueya was removed from the list in August 2018. She also represented that she has seen Quisqueya School of Nursing on a list of closed or terminated programs that is available on a public website, presumably maintained by the Florida Board.

C. TESTIMONY OF MS. GREEN

Ms. Green is the Assistant Director of Enforcement with the Board and a licensed registered nurse (RN) in Texas. She performs enforcement investigations and is responsible for department oversight.

Regarding Respondent's application, Ms. Green described the Board's online application form and how applicants must select a school from a state-specific drop-down menu of approved schools populated by the NCSBN using lists submitted by different states. According to Ms. Green, the drop-down list includes schools that have closed and will indicate their closed status, as was done in Respondent's application with the Quisqueya School of Nursing.[55]

Because Respondent applied for licensure by endorsement in Texas after passing the NCLEX and obtaining a Florida license, Ms. Green testified, the application was treated differently from those of applicants who attended school in Texas and sought licensure upon initial examination. She explained that the Board verified the applicants' out-of-state licenses but did not request information

[55] She further testified that the Board relies on the listed school in approving licensure applications, though she noted that a school's presence on the list did not mean it had been approved in Texas.

regarding their nursing education beyond what was listed in the endorsement applications, nor did the Board request information from schools or verify the validity of the out-of-state nursing programs.[56] Nevertheless, Ms. Green testified that the fact Respondent was able to select Quisqueya School of Nursing from the drop-down list of schools provided by Florida, before seeking and obtaining her license by endorsement in Texas, did not necessarily mean the Board had "approved" that education.

Ms. Green also opined that Respondent's representation that she graduated from Quisqueya School of Nursing on December 13, 2019, was inaccurate. Ms. Green noted that information from the Florida Board indicated the program could not admit new students in December 2018, while Respondent's transcript—purportedly prepared by director Ms. Russ[57]—stated she attended Quisqueya Health Care Academy from December 2018 through December 2019.[58] In addition, Quisqueya's owner, Ms. Napoleon, identified Respondent as an individual that did not meet Quisqueya's educational program requirements.[59] Ms. Green also relied on the fact that all of the addresses Respondent provided to the Board and Florida Board were Texas addresses, not Florida addresses, and that

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[56] Ms. Green testified that the Board has become more concerned with vetting applications for licensure by endorsement since learning of Operation Nightingale.

[57] Staff Ex. 3 at 4. Ms. Green testified that the Board received this transcript from NCSBN as a part of Operation Nightingale and not from Respondent. The transcript indicates that Respondent completed 562 hours of theory instruction and 788 hours of clinical instruction. Staff Ex. 3 at 4. Ms. Russ also purportedly signed and issued an Affidavit of Graduation for Graduates in the USA and US Territories (Affidavit of Graduation) stating that Respondent received a diploma/certificate in nursing after entering Quisqueya Health Care Academy located in Lake Worth, Florida, on December 10, 2018, and completing graduation requirements on December 13, 2019. Staff Ex. 9 at 60.

[58] Staff Ex. 3 at 4; *see also* Staff Ex. 10 at 67.

[59] Ms. Green conceded that Ms. Napoleon's affidavit and the transcript signed by Ms. Russ were supplied by individuals convicted of various crimes, including crimes of dishonesty.

Respondent's own affidavit represented she started taking classes in August 2018 at Nursing Bridges in Houston and completed her clinicals at a Houston facility.[60] Ms. Green testified that Nursing Bridges, a Florida school, was never approved by the Board to provide nursing education in Texas, including classroom or clinical instruction. She stated the same was true for Quisqueya, Sacred Heart, and Jean's NCLEX Review.

Ms. Green opined that an applicant seeking to become a nurse who lacked the required education could pose a risk of harm to a patient or public safety, and that public safety was put at risk by Respondent's representations regarding her education. She also indicated that there is a risk to the public if you cannot determine that a nurse received sufficient education to care for patients in Texas, though she conceded that Respondent had never been disciplined by the Board.

On cross-examination, Ms. Green testified that Respondent was able to receive an endorsement license in Texas despite Quisqueya School of Nursing being listed as "closed" because applicants may not pursue licensure in another state until several years after graduating. She further testified that Quisqueya School of Nursing and Quisqueya Health Care Academy had different physical addresses according to the transcript and drop-down menu in the endorsement application,[61] though she personally tested the drop-down menu the week of the hearing and saw only one

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[60] *See* Staff Ex. 18 at 611-12.

[61] Quisqueya Health Care Academy's address was listed as in South Lake Worth, Florida, while Quisqueya School of Nursing's address was listed in Boynton Beach, Florida. *See* Staff Exs. 3 at 4, 6 at 17.

Quisqueya entity—the Quisqueya School of Nursing, which was listed as "closed"—in the drop-down menu.

D. TESTIMONY OF MS. CARLIN

Ms. Carlin currently serves as the Director of Nursing for Galveston College and a consultant for the Board. She has been a licensed nurse in Texas for more than 40 years and has previously worked as faculty and a director of continuing education programs at the university level as well as at various director-level positions at the Texas Higher Education Coordinating Board.[62] She was designated as an expert on nursing education in Texas.

Ms. Carlin testified there were approximately 90 Board-approved LVN programs in Texas between 2018 and 2019, about eight of which offered both classes and clinicals.[63] The approximate cost to attend a one-year practical LVN program in Houston in 2019, she estimated, was between $8,000-9,000. She further testified that, on average, a full-time student would complete the program in one year, while a part-time student would take one and a half to two years to complete. According to Ms. Carlin, Nursing Bridges and the Quisqueya Schools were never approved by the Board to provide nursing education, classes, or clinicals in Texas.

After reviewing Respondent's discovery responses and license application, Ms. Carlin concluded that Respondent's representation that she received her

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[62] Ms. Carlin's curriculum vitae was admitted as Staff Exhibit 25.

[63] Ms. Carlin did not explain during her testimony why some Texas-approved programs offered clinicals while others did not.

nursing education from Quisqueya was either fraudulent or false based on discovery responses indicating she attended Nursing Bridges, not Quisqueya. Ms. Carlin also opined that the Board was harmed and injured as a result of the false representation and would not have issued Respondent's license had it known the truth.

According to Ms. Carlin, Respondent did not receive a substantially equivalent education under the Board's rules because the Florida schools she took classes with were not approved to provide education outside of Florida, and the Board would not approve the manner in which Respondent received her clinical education. Consequently, Ms. Carlin stated that Respondent failed to comply with the Board's substantive rule regarding professional education when she applied for her license in March 2021. Based on her understanding that Respondent did not graduate from Quisqueya in Florida or any approved nursing program in Texas, Ms. Carlin stated that Respondent should not be currently licensed in Texas as an LVN and posed a serious risk.

Ms. Carlin testified that a vocational nursing program operating in another state may be substantially equivalent to a Texas-approved program under Rule 217.5(a)(1)(B) if it includes theory and clinical experience in five areas: medical-surgical, obstetrics,[64] pediatrics, geriatrics, and mental health nursing. While Ms. Carlin stated she was less concerned about Respondent's theory courses, as it

[64] This was also referred to as maternity/newborn and mother/infant at other points in the hearing.

appeared the five areas had been covered, she felt she lacked enough information to conclude whether Respondent's theory education was substantially equivalent.[65]

However, Ms. Carlin testified to having concerns with Respondent's clinical education because Respondent performed all of her clinicals at a single location—a long-term care rehabilitation facility—and apparently had no clinicals in pediatric or obstetric nursing. She stated there is no minimum number of required clinical hours for LVN applicants in Texas but insisted they must be completed in the five different areas to be sufficient.[66] She later clarified that clinical experience in mental health nursing is optional under Rule 214.9(e)(5)(D). She did not know how many clinical hours Respondent had completed.

While stating it is up to each nursing program to determine how and for how long clinicals are performed in each area, Ms. Carlin testified that most obstetric, pediatric, and medical-surgical clinicals are performed in acute care settings such as hospitals, though that is not required. She testified that pediatric clinicals may also occur in clinics, schools, or daycares, while medical-surgical clinicals may occur in rehabilitation centers or long-term care centers, in addition to acute care settings.

Although individual nursing programs determine how many hours students are required to complete, the Board must, according to Ms. Carlin, approve those

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[65] Ms. Carlin had received Respondent's syllabi earlier that day but stated she would also need to consider the organization of the educational institution, faculty credentials, planned clinical facilities, philosophy and objectives, course outcomes, course assignments, syllabi, and lab and simulation facilities and equipment. Ms. Carlin did note that Respondent's instructors appear to have been licensed RNs, but she had no knowledge of Nursing Bridge's facilities.

[66] She also testified that there is no minimum number of clinical hours required in each of the five areas.

determinations. Ms. Carlin did not know the lowest number of clinical hours approved by the Board but said she would be surprised if it was less than 200 hours for all five areas, as her own program requires 200 hours in medical/surgical nursing alone. When asked to respond to a Board study citing an approved, prelicensure nursing program in Texas that required only 176 hours of hands-on patient care,[67] Ms. Carlin testified that the number was surprisingly low.[68]

Ms. Carlin testified that she would expect LVN candidates to practice the following nursing skills in each subject area:

- **Obstetrics**: (1) assisting clients with activities of daily living (bathing, hygiene/using the restroom); (2) evaluating the timing of contractions; (3) collecting data, weights, and vital signs; (4) participating in client assessments after an RN performs the initial assessment; (5) administering and documenting medications, including intravenously (IV), as prescribed by physicians; and (6) providing assistance during and after labor.[69]
- **Pediatrics:** (1) assisting with assessments; (2) assisting with activities of daily living; (3) administering medication; and (4) assessing fine motor skills.[70]
- **Medical-Surgical:** (1) administering medications; (2) performing any procedures or treatments required or ordered, such as ambulation, turning patients, or changing dressings; (3) assisting with nasal cannula;

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[67] Respondent Ex. 7 at 89.

[68] She had the same reaction to a 2019 survey that listed the lowest number of reported patient-care clinical hours as 192, though this survey was for RN programs rather than LVS programs. Respondent Ex. 8 at 101.

[69] While Ms. Carlin testified that an LVN student could practice and learn to perform certain skills, such as administering medication, on any type of patient rather than only pregnant patients, she noted that students should still be practicing on pregnant patients during obstetrics clinicals.

[70] She testified that LVNs can administer medication to pediatric patients so long as they have been checked off by their skills lab supervisor and that, for some skills, the LVN can learn those skills in the lab before competently using them on different types of patients.

(4) assisting with patient assessments; and (5) teaching patients with ongoing conditions or treatments for care after discharge.

- **Geriatrics**: (1) participating in any ordered procedures; (2) feeding; (3) ambulating; (4) administering medication; and (5) assisting with activities of daily living.[71]

Ms. Carlin further testified that it can be difficult for nursing programs to secure pediatric and obstetric clinical sites in rural locations or due to competition among programs, as reflected on the Board's webpage on clinical experiences,[72] which was also a problem during the COVID-19 pandemic. Ms. Carlin confirmed that, when clinical opportunities in acute care settings are scarce, non-acute care settings and/or simulations experiences may also be used. Ms. Carlin testified that simulation experience involves using a high-fidelity mannequin that can replicate breathing, heart rates, and distress in simulation labs so that students can practice recognizing conditions, though she observed that the Board's current definition of "simulation"[73] does not require such mannequins.[74] Nevertheless, she believed the definition contemplated mannequin simulations and other opportunities for students to recognize subtle patient changes and responses. Ms. Carlin did not believe that

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[71] Ms. Carlin was not asked about skills for mental health clinicals.

[72] *See* Respondent Ex. 6 at RES 0085.

[73] *See* Respondent Ex. 6 at RES 0085. The answer to the question on the Board's webpage was cut off on Respondent's pre-hearing exhibits. Respondent asked during the hearing to supplement the exhibit with the full document, but the subsequently filed and admitted exhibit also failed to expand the written answer. Therefore, the ALJ relies on the testimony regarding the website as it was read during the hearing.

[74] The current definition matches that applicable in 2021. *See* Rule 214.2(37) (defining simulation as "activities that mimic the reality of a clinical environment and are designed to demonstrate procedures, decision-making, and critical thinking. A simulation may be very detailed and closely imitate reality, or it can be a grouping of components that are combined to provide some semblance of reality. Components of simulated clinical experiences include providing a scenario where the nursing student can engage in a realistic patient situation guided by trained faculty and followed by a debriefing and evaluation of student performance.").

case studies would constitute simulations but agreed that the Board recognizes clinical learning experiences may occur in settings outside of patient care clinical learning situations, including in associated clinical conferences, laboratories, and simulated clinical settings, and that the program faculty has discretion in determining the type of clinical learning tools the program will use to meet clinical objectives in each course.

E. TESTIMONY OF RESPONDENT

In 2014, Respondent immigrated to the United States from Nigeria, where she previously taught high school mathematics and introductory technology.[75] She was working in Houston at a community living facility in 2018 when she decided to pursue a career in nursing.[76] After a coworker who had completed an RN program with Nursing Bridges suggested that Respondent look into the school,[77] Respondent met with Mr. Itaman in June 2018 and was told that Nursing Bridges's one-year LVN program was affiliated with Sacred Heart in Florida. She applied the same day and, on August 1, 2018, after passing an entrance exam and submitting her high school diploma and a physical assessment, received an acceptance letter on Sacred Heart letterhead.[78] When classes began that month, Respondent attended an orientation with Mr. and Ms. Itaman and visited the conference hall, library, skills lab, simulation lab, classrooms, break room, and offices. Two weeks later, according to Respondent,

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[75] Staff Ex. 18 at 611.

[76] Staff Ex. 18 at 611.

[77] Staff Ex. 18 at 611.

[78] Staff Ex. 1.

Mr. Etienne visited Nursing Bridges and introduced himself as the owner of Sacred Heart, stating that the school was approved by the Florida Board.

Respondent testified to several concepts, conditions, and skills that she studied during her obstetric, pediatric, mental health, medical-surgical, and geriatric clinicals.[79] She stated she was required to complete 15 hours in the skills lab before moving to the simulation lab. After performing 30 hours of simulation, she started clinicals at West Janisch Health Care Center (West Janisch), a nursing home and long-term care facility in Houston. She described administering medication and checking vitals on infant and/or child mannequins in the simulation lab. In addition, she changed and assessed colostomy bags and physically transferred and administered medication to geriatric patients and/or patients with dementia at West Janisch, where she estimated completing 162 hours of clinicals. She also participated in 20 hours of computer scenarios. In addition to her hands-on clinicals at West Janisch and post-clinical conferences, Respondent participated in classroom instruction,[80] case studies, simulations, and post-simulation debriefings.

Respondent testified that she took and passed an exit exam in November 2019 and graduated in December 2019, though seven of the ten students in her cohort failed the exam. She stated that the school decided that students who had passed would have to wait until those who failed—and had been placed on a remediation

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[79] Respondent attended classes three days a week for five hours each day during the program, while continuing to work her job at the community living facility. Staff Ex. 18 at 611.

[80] Respondent stated she received instruction from Ms. Itaman, Melissa Rodriguez, Nkem Omolola, and Justina Ewoh. Pet. Ex. 18 at 612. Respondent provided exhibits demonstrating that all except Ms. Rodriguez were licensed RNs. Respondent Ex. 5. Ms. Rodriguez's status is unknown.

plan—also passed, so the students could be processed together to take the NCLEX exam. This is why, Respondent said, she received March 2020 communications about additional testing,[81] despite having already graduated.

After the remedial students passed the exit exam in March 2020, Respondent testified that Mr. Etienne transferred all of the Nursing Bridges students to Jean's NCLEX Review for NCLEX processing, though she had not asked to be moved. After subsequently speaking with Ms. Jean of Jean's NCLEX Review, however, Respondent purportedly believed she would be processed through Sacred Heart instead. She later learned that was not the case when she reported to Ms. Jean to be fingerprinted before the NCLEX and received her transcript, which had been issued by the Quisqueya School of Nursing.

When questioned by Respondent, Ms. Jean purportedly stated that Nursing Bridges, Sacred Heart, and Quisqueya were all affiliated with one another and working together. Respondent testified that she did not find this strange because schools in Nigeria often affiliate with other schools, and she believed the same was true in the United States, having not attended school here previously. Respondent testified she never received a transcript from Nursing Bridges.

Respondent then applied for the NCLEX-PN examination in Florida, claiming that she thought she had to apply in the state where her nursing school was based and

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[81] Staff Ex. 2 at 2 (email to Respondent stating the March 2020 exit exam would be given at Nursing Bridges). Respondent testified, and Respondent's counsel explained at several points during the hearing, that Respondent needed to clarify misstatements in her declaration, which averred that she spent several more months training in the LVN program after completing the program in December 2019. *See* Staff Ex. 18 at 612.

that she did not know she could apply directly to Texas. She described becoming an LVN in Florida in March 2021, the day after passing the Florida NCLEX on her first try, and seeking endorsement with the Board in Texas five days later because that was her state of residence and where she wanted to work. Respondent testified to having no disciplinary issues with the Texas or Florida Boards or problems with her patients since she was licensed as a nurse. She is currently working as an LVN as a private duty home aid and assisting a patient with a G-tube without supervision.

On cross-examination, Respondent confirmed that she lives in Texas and never lived or worked in Florida, nor did she ever intend to work there. Respondent did not check with the Board before enrolling with Nursing Bridges in August 2018 to see if Nursing Bridges, Sacred Heart, or Quisqueya were approved by the Board, nor did she compare the cost of her tuition—$18,000 for the yearlong program—with other programs in Texas. She confirmed that all her nursing classes and clinicals were taken in the Houston area and that her two-week, in-person clinicals were performed before the COVID-19 pandemic started at West Janisch, with exclusively non-pregnant adult patients. She conceded that her discovery responses and a declaration signed for Respondent by her attorney stated that she spent several additional months in the program after Ms. Itaman said Respondent and the other students were not ready to graduate in December 2019, and that they completed additional simulation clinicals after March 2020.[82] However, Respondent reiterated that her attorney had incorrectly conveyed information suggesting Respondent was

[82] The discovery response states that the "remainder of Respondent's [c]linical experience came from participating in vSIM - a virtual simulation program," during which she was "exposed to various real nursing scenarios with various patient populations." Staff Ex. 23 at 1115 (Interrogatory 11); *see also* Staff Ex. 18 at 612 (par. 15).

told she was not ready to graduate and had to complete additional training and testing, as that was directed solely at the remedial students.

Respondent admitted that her endorsement application stated she obtained her nursing education from Quisqueya School of Nursing, even though she had attended Nursing Bridges and had not taken any classes or clinicals with Quisqueya. However, she claimed to believe she was transferred to Quisqueya. She denied knowing about individuals buying or selling nursing diplomas or having suspicions that her nursing program was engaging in any wrongdoing. Respondent agreed that a person working as a nurse without the required nursing education could seriously risk harming a patient.

V. ANALYSIS

Staff alleges numerous violations by Respondent, falling into three general categories, including that Respondent 1) is practicing nursing under a diploma, license, or record that was unlawfully issued, and did not complete an approved nursing program, 2) engaged in fraud and/or deceit in obtaining her nursing degree and in her representations to the Board regarding her nursing education, and 3) violated the Board's professional conduct rules. Because all of Staff's claims turn on the first question, the ALJ considers that issue at the outset.

A. RESPONDENT PRACTICED NURSING UNDER AN UNLAWFULLY ISSUED RECORD IN VIOLATION OF ACT SECTION 301.451(3)

Staff argues that Respondent violated Act section 301.451(3) when she practiced nursing under a diploma, license, or record that was obtained unlawfully or

fraudulently, or signed or issued unlawfully or under false representation. Respondent, meanwhile, claims Respondent's license was properly issued after she attended and satisfied the requirements of an approved Florida nursing program with substantially equivalent education standards to a Texas-approved program. In support of her position, Respondent cites various provisions of the Act and Board rules authorizing licensure by endorsement for vocational nursing applicants if they received a substantially equivalent education.[83]

The evidence, however, establishes that Respondent's transcript from Quisqueya Health Care Academy, and any resulting diploma, was signed and issued unlawfully and under false pretenses. Respondent alleges that she enrolled in Nursing Bridges and/or Sacred Heart on August 1, 2018, and was subsequently transferred to Quisqueya. She further argues that the transfer could have occurred before Quisqueya's August 3, 2018 enrollment cutoff for new students, meaning she graduated after participating in the school's "teach out" program.[84] But even assuming that were true—which the ALJ does not find, as there was no evidence suggesting Respondent began training under a different curriculum or program at any point—the Quisqueya Schools were approved vocational nursing programs in Florida that could issue diplomas to students who completed the course of study *on*

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[83] *See* Respondent's Closing Br. at 2-11 (citing Tex. Occ. Code § 301.157(d)(3), (d-4); Rule 217.5(a)(1)(B)(i-iii)).

[84] In the alternative, Respondent argues that the proposed August 2018 enrollment cutoff date is incorrect, suggesting that the Florida Board would have rejected Respondent's application and not allowed her to sit for the NCLEX-PN based on her transcript's December 2018 enrollment date if that were the case. In support, Respondent references testimony provided by Jason Bowman of the FCIE in another SOAH proceeding. *See* Respondent's Closing Br. at 3-4. Mr. Bowmen's testimony was not offered as evidence in this proceeding and the ALJ will not consider evidence outside of the record in this case. The preponderant evidence indicates that the Quisqueya Schools were not permitted to enroll new students after August 3, 2018, though the ALJ notes that a later enrollment date would not have changed the outcome.

campus and *in-person* pursuant to their program outlines. Regardless of what Florida law may authorize generally,[85] neither program was licensed or approved to provide online instruction or classroom or clinical instruction in Texas. The same was true for every other school Respondent purportedly attended and/or transferred through.

Respondent, moreover, did not attend an approved program, regardless of what her program was ultimately called. She admittedly attended her program entirely in Texas and never took courses or clinicals in Florida. The Texas program she participated in was not approved by the Board, the TWC, or any other appropriate agency, and the Florida Board and FCIE did not and could not approve any of the identified schools to operate a program in Texas.[86] Of course, even if this Texas program could be attributed to Quisqueya's Florida program, Respondent did not complete the prescribed course of study for the Quisqueya Schools. Respondent's transcript indicated she completed 788 hours of clinical instruction—the minimum required under both Quisqueya program outlines—but Respondent conceded to completing only 227 hours, all of which were performed in Texas. Having attended an entirely distinct Texas program and failed to complete the required clinical practice, Respondent cannot be certified as a graduate of Quisqueya.[87] Thus, Ms. Russ, Quisqueya's dean, lacked authority to issue the transcript and the Affidavit of Graduation for Respondent, which were issued unlawfully and under false pretenses.

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[85] *See* Respondent's Closing Br. at 4-5 (claiming that Florida law authorized, for a practical nursing education program, clinical training in the United States, the District of Columbia, or a possession or territory of the United States).

[86] *See* Rule 214.3(a)(1), (2)(B) (requiring Texas programs to be approved by the Board and other appropriate agencies).

[87] Tex. Occ. Code § 301.157(d).

As for Respondent's claim that she completed a substantially equivalent program through Nursing Bridges or some other entity, the argument fails for several reasons. First, the argument incorrectly relies on Board rules *as amended* after Respondent applied for and received her license. In 2021, the plain language of the Board's rules required applicants for licensure by endorsement to have graduated from an approved program; they did not contain any language about a substantially equivalent education. Second, the program Respondent attended was operated in Texas, not another state, so provisions regarding a substantially equivalent education would not apply. Third, to constitute a substantially equivalent education under both current Rule 217.5(a)(1)(B) and Rule 217.2(a)(4)(B) as in effect in 2021, the applicant's program must still have been approved by a state board of nursing.[88] Respondent did not attend any program as it was approved by any state board of nursing. Furthermore, licensure by endorsement required Respondent to have practiced in the endorsing state, but she conceded to never visiting or working in Florida after obtaining her Florida license. Therefore, the substantially equivalent education provisions are inapplicable in this case, and the ALJ need not reach whether the education Respondent received was substantially equivalent. When she applied, Respondent did not qualify for licensure by endorsement in Texas, and none of her arguments regarding her specific courses, studies, or clinicals would make her eligible under the applicable rules.

Respondent relied on the transcript and Affidavit of Graduation to secure her Florida nursing license and, in turn, her Texas nursing license by endorsement. Since obtaining her license in April 2021, Respondent has practiced vocational nursing in

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[88] *See* Rule 217.2(a)(4)(B)(i); Rule 217.5(a)(1)(B)(i) (current version).

Texas, working several nursing positions in supported living and nursing homes and as a home health nurse. The ALJ finds that, at minimum, Respondent violated Act section 301.451(3)(B), because she was practicing nursing under an unlawfully issued transcript, Affidavit of Graduation, and license. She is therefore subject to disciplinary action for that violation pursuant to section 301.452(b)(1), which authorizes disciplinary action for the violation.

B. RESPONDENT DID NOT COMMIT FRAUD OR ENGAGE IN DECEIT

In addition, Staff alleges that Respondent is subject to disciplinary action because she engaged in fraud or deceit in procuring or attempting to procure a license under Act section 301.452(b)(2)); used a license or diploma "that has been fraudulently purchased, issued, counterfeited, or materially altered" under section 301.452(b)(5)); and fraudulently obtained or fraudulently furnished a nursing diploma, license, renewal license, or record under section 301.451(1).[89] Because neither the Act nor Board rules define fraud, the ALJ applies the common law definition, which requires "a material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused

[89] Staff's written closing also alleged that Respondent assisted another in fraudulently obtaining or furnishing a record or application in violation of Act section 301.451(2), but Staff did not cite this statute in the First Amended Formal Charges. *See* Staff's First Am. Formal Charges at 3 (filed April 5, 2024). Regardless, as described below, Staff did not prove by a preponderance of the evidence that Respondent acted fraudulently in obtaining or furnishing any records or that she assisted others in any fraud. For these reasons, Staff also failed to prove any remaining allegations under Act section 301.451(3)(A), which prohibits practicing nursing under a diploma, license, or record that was "obtained unlawfully or fraudulently."

injury."[90] Staff alleges that Respondent engaged in fraud, as well as the subcategory of fraud by nondisclosure, because she had a duty to disclose she did not attend Quisqueya and that she took classes and clinicals in Texas rather than Florida, and her nondisclosure was as misleading as a positive misrepresentation of facts.[91]

The ALJ finds, however, that Staff did not meet its burden to show that Respondent knowingly or recklessly made false representations, nor that Respondent had a duty to make disclosures regarding the issues alleged by Staff. Rather, the preponderant evidence suggests Respondent sincerely believed, based on her training and conversations with program administrators, that she had graduated from a legitimate nursing school as listed in her license and renewal applications.

Respondent, a recent immigrant, learned of Nursing Bridges, whose campus consisted of a conference hall, library, skills lab, simulation lab, and classrooms, from an RN coworker. She credibly testified that Nursing Bridges and Sacred Heart administrators represented the schools were affiliated, and that Sacred Heart was approved by the Florida Board. Respondent completed more than a year of didactic and clinical instruction with various RN instructors, including classroom education, skills labs, simulations, case studies, and more than 160 hours of offsite, hands-on clinicals, before passing an exit exam. Although Respondent testified to experiencing some confusion upon learning that she had been transferred to Jean's NCLEX

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[90] *Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998) (citing *Sears, Roebuck & Co. v. Meadows*, 877 S.W.2d 281, 282 (Tex. 1994)); *see also JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 653 (Tex. 2018); *and see "Fraud,"* O'Connor's Texas Causes of Action Ch. 12-A § 1 (2024 ed.) (collecting cases).

[91] *See Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 181 (Tex. 1997).

Review, only to then have her transcript issued by Quisqueya Healthcare Academy, conversations with school administrators Mr. Etienne and Ms. Jean left her believing Jean's NCLEX Review and Quisqueya were also affiliated—something common in her home country of Nigeria—and that it did not matter which school she was processed through so long as she had completed her nursing education program.

Consequently, the preponderant evidence does not prove that Respondent knowingly or recklessly made a false representation by selecting the Quisqueya School of Nursing in the Education History section of her endorsement application. While it is true that Respondent's transcript was issued by Quisqueya Healthcare Academy, rather than the Quisqueya School of Nursing, Staff's own witnesses testified that both names were used interchangeably with the Florida Board, and that Ms. Russ was the dean of the Quisqueya Schools. The school's address on the endorsement application, moreover, auto-populated after Respondent selected the Quisqueya School of Nursing—the only Quisqueya School on the list—from the drop-down menu, and Respondent credibly believed that the various schools associated with Nursing Bridges were based on Florida, as indicated. Furthermore, Staff's suggestions that Respondent committed fraud because she overpaid for and spent more time than was necessary in the program only reinforce that Respondent was not seeking to shortcut the system by "buying" a diploma but believed she was completing a legitimate program. Thus, Respondent had no duty to disclose information she did not believe was material or necessary based on her understanding of the graduation and application process as represented by her school advisors.

Notably, nothing in the Texas endorsement application form required Respondent to disclose the information Staff claims she omitted. The form contains an "Education History" section that seeks the name of the program of applicant's "initial vocational/practical nursing education" from which a "degree [was] obtained," which is also described as "your Education Basis for Licensure."[92] Respondent's answers that she graduated and obtained a certificate in nursing from Quisqueya aligned with the transcript she received. Although Staff disputed the December 2019 graduation date, Respondent steadfastly denied graduating in 2020 with other classmates who, unlike Respondent, failed the November 2019 exit exam.[93] Moreover, the endorsement form did not require applicants to identify every school that they had previously attended or obtained credits from, or all locations where they received classroom or clinical instruction. The same was true for Respondent's renewal application.[94]

This is not to say there were no red flags that could have raised Respondent's suspicions. Besides the multiple school "transfers," delayed NCLEX processing, and lack of hands-on clinicals with patients in core study areas, Respondent's transcript, in particular, substantially inflated the number of clinical hours completed by Respondent. It is unknown, however, if or when Respondent noticed this discrepancy. But taking everything into consideration, the ALJ finds that Staff did not meet its burden to show Respondent engaged in fraud or deceit in procuring a

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[92] Staff Ex. 6 at 17.

[93] No evidence contradicted this testimony but for Respondent's own discovery responses, which she disavowed and sought to clarify under oath from the very start of the hearing. The ALJ finds that Respondent credibly testified that she believed she graduated by December 2019.

[94] Staff Ex. 8 at 44.

license under Act section 301.452(b)(2); used a license or diploma that was fraudulently purchased, issued, counterfeited, or materially altered under section 301.452(b)(5);[95] or fraudulently obtained or furnished a nursing diploma, license, renewal license, or record under section 301.451(1). Instead, the preponderant evidence suggests it was just as likely, if not more so, that Respondent herself was a victim or unwilling participant in a fraudulent scheme perpetuated by others.

C. RESPONDENT ENGAGED IN UNPROFESSIONAL CONDUCT

Staff further asserts that Respondent is subject to disciplinary action under Act section 301.452(b)(1) for engaging in unprofessional conduct in the practice of nursing that was likely to deceive, defraud, or injure a patient or the public.[96] Specifically, Staff alleges that Respondent violated Rule 217.12 regarding unprofessional conduct by 1) engaging in conduct that may endanger a client's life, health, or safety; 2) providing false, deceptive, or misleading information in connection with the practice of nursing; and 3) providing false or misleading answers, or failing to answer specific questions, in a licensing or employment matter that could

[95] It is a much closer question as to the violation alleged under Act section 301.452(b)(5), as evidence suggests Respondent's diploma and transcript *were* fraudulently issued. However, the fraud was committed by others, not Respondent, and Staff's First Amended Formal Charges repeatedly allege that it was Respondent who obtained her degree and transcript through fraudulent means. Because Respondent did not commit fraud in obtaining or purchasing her degree, Staff did not prove this alleged violation.

[96] Staff's closing also claimed that Respondent is subject to disciplinary action for violating Rule 213.27 because she failed to demonstrate she possesses good professional character related to the practice of nursing. Pet.'s Written Closing Arg., at 2. The ALJ does not consider this claim, however, because it is not cited as a violation in Staff's First Amended Formal Charges, nor does Staff's closing specify which provisions Respondent purportedly violated.

reasonably affect the decision to license, employ, certify, or otherwise utilize a nurse.[97]

"False" is not defined in the Act or Board rules. The ALJ, therefore, uses the ordinary meaning of the term,[98] which includes something that is untrue by intent, accident, or mistake.[99] Respondent's license was obtained through her false representation that, in December 2019, she completed the graduation requirements of Quisqueya Health Care Academy, a Florida-approved nursing school authorized to teach students onsite in Florida. She then admittedly practiced nursing under her license without holding the requisite degree or training. Although Respondent made these representations with no intent to mislead or deceive, as described above, the Board relied on Respondent's false representations when approving her endorsement application and would not have issued the license had it known Respondent lacked the necessary educational credentials. The evidence further demonstrated, through testimony from Ms. Green and Ms. Carlin, that the Board and public were likely to be harmed as a result of these representations, as nursing applicants who lack the required education and experience pose a risk of harm to patients and public safety. For these reasons, the ALJ finds Staff met its burden of

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[97] Rule 217.12(4), (6)(H), (I).

[98] *See* Tex. Gov't Code § 311.011(a) (stating that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *see also State v. $1,760.00 in U.S. Currency*, 406 S.W.3d 177, 180 (Tex. 2013) ("Undefined terms in a statute are typically given their ordinary meaning.").

[99] *See False*, Black's Law Dictionary (12th ed. 2024) (defined as "untrue," "deceitful," "lying," and "wrong" or "erroneous"); *see also False*, The American Heritage Dictionary of the English Language, https://www.ahdictionary.com/word/search.html?q=false (last visited Sept. 16, 2024) (defined as "contrary to fact or truth," "deliberately untrue," "arising from mistaken ideas," and "intentionally deceptive").

proving Respondent engaged in unprofessional conduct as alleged and that the Board may impose disciplinary action under section 301.452(b)(1) of the Act.

D. SANCTION ANALYSIS

Because Respondent engaged in unprofessional conduct and practiced nursing under a diploma, license, or record that was signed or issued unlawfully or under false pretenses in violation of the Act, the Board may impose disciplinary action under Act section 301.452(b)(1). The Matrix provides tiers and sanction levels for each violation and directs that the most severe sanction recommended for any of the violations should be considered.[100]

As it pertains to Act section 301.452(b)(1), the Matrix mainly contemplates violations of a Board order and does not squarely address the circumstances at issue in this case. However, in considering the Matrix, the ALJ finds that practicing under an unlawfully issued record and engaging in unprofessional conduct,[101] on these facts, both constitute a Second-Tier offense. A First-Tier offense is not appropriate because the conduct involved the provision of false information relating to substantive educational requirements, rather than an isolated failure to comply with a procedural rule, and a Third-Tier offense does not apply because this case does not involve probationary restrictions.

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[100] Tex. Occ. Code § 301.4531(c)(1); Rule 213.33(b), (c).

[101] Although unprofessional conduct violations typically lead to disciplinary action under Act section 301.452(b)(10), Staff waived that claim by failing to include the provision in its First Amended Formal Charges. Nevertheless, the ALJ finds that disciplinary action is still authorized under the more generic provision in Act section 301.452(b)(1) based on the violation of a Board rule.

None of the Matrix's aggravating or mitigating factors apply besides Staff proving multiple violations, though the ALJ notes that all the violations here stem from the same conduct.[102] As for additional mitigating factors that must be considered under the Board's rules, there is no evidence of any prior disciplinary action against Respondent in any jurisdiction (though she has only practiced nursing in Texas), no evidence of actual patient harm, and insufficient evidence that Respondent was knowingly or willfully untruthful.[103] However, this must be weighed against the multiple aggravating factors proven in this case stemming from Respondent's lack of the requisite educational credentials. The evidence demonstrated that Respondent poses a potential harm to patients, clients, and the public; made false representations (albeit unwittingly) regarding her knowledge, education, experience, credentials, or skills that would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the facts where such reliance could be unsafe; poses a potential threat to public safety; and committed serious violations given her insufficient training and experience.[104]

Based on these aggravating factors, the ALJ finds Respondent's offenses fall within Sanction Level II, especially considering that Respondent cannot correct the violations and will remain out of compliance until she obtains a lawful diploma and meets the eligibility requirements for practicing nursing. Sanction Level II, Second-Tier offenses authorize denial of licensure, suspension, revocation, or

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[102] Rule 213.33(b), (c)(13).

[103] Rule 213.33(c)(1), (2), (6), (8).

[104] Rule 213.33(c)(1), (3), (14), (15), (18).

voluntary surrender.[105] Given that Respondent's license never would have been issued had the Board known the nature of Respondent's education history, and that she lacked the foundational underpinnings necessary to obtain be licensed in Texas, the ALJ must, unfortunately, recommend that her license be revoked.

Having proven that Respondent is subject to discipline under Act section 301.452(b)(1), the Board is further authorized to deny Respondent's renewal application.[106] Based on the same aggravating and mitigating factors cited above, the ALJ finds that denial is in the Board's interest of regulating nursing activity and protecting clients and the public from harm.

VI. FINDINGS OF FACT

1. Folasade Margaret Akinrolabu (Respondent) received a Licensed Practical Nurse (LPN or PN) credential from the Florida Board of Nursing (Florida Board) on March 3, 2021.

2. On March 8, 2021, Respondent applied to the Texas Board of Nursing (Board) for Licensed Vocational Nurse (LVN, equivalent to LPN) licensure by endorsement (endorsement application) and was issued LVN license no. 1031788 on April 12, 2021.

3. Respondent's endorsement application stated that she obtained a vocational/practical certificate in nursing from the Quisqueya School of Nursing in Boynton Beach, Florida, and graduated on December 13, 2019.

4. On April 6, 2023, Respondent applied with the Board to renew her license, listing the same education history as in her endorsement application.

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[105] Rule 213.33(b).

[106] Tex. Occ. Code § 301.453(a)(1).

5. Quisqueya Health Care Academy, LLC, which was formerly known and did business as Sunshine Academy, and Quisqueya School of Nursing (together, the Quisqueya Schools or Quisqueya), were approved by the Florida Board to provide practical/vocational nursing education in Florida. The Quisqueya Schools used both names interchangeably in documentation and correspondence with the Florida Board.

6. The Quisqueya Schools were approved for in-person and on campus education and were not approved for online classroom or clinical instruction or instruction outside of Florida. The Quisqueya Schools each required 788 hours of clinical instruction performed in Florida for graduation.

7. In summer of 2018, the Florida Board received a closure notification stating the Quisqueya Schools were voluntarily closing, that enrollment had ceased, and that the programs had prepared a "teach out" plan for students that were already enrolled. Quisqueya was not authorized to admit or transfer in new students after August 3, 2018, though they could "teach out" enrolled students until Quisqueya closed on December 19, 2019.

8. The Florida Board approved Nursing Bridges Healthcare Institute (Nursing Bridges) and Sacred Heart International Institute, Inc. (Sacred Heart) to provide practical/vocational nursing education in Florida. Nursing Bridges and Sacred Heart were approved for in-person education and were not approved for online classroom or clinical instruction or instruction outside of Florida.

9. In August 2018, after paying $18,000 to enroll and passing an entrance examination, Respondent began attending a one-year LVN program located in Houston, Texas, operated under the name Nursing Bridges

10. Nursing Bridges staff told Respondent that the school was affiliated with Sacred Heart, which was based in Deerfield Beach, Florida. Sacred Heart's owner, Charles Etienne, came to Nursing Bridges and told Respondent that Sacred Heart was approved by the Florida Board and affiliated with Nursing Bridges.

11. Between August 2018 and November 2019, Respondent participated in didactic and clinical instruction with the Nursing Bridges's Houston program.

Respondent's instructors were licensed registered nurses, and she attended classes three days a week for five hours each day.

12. Respondent completed 227 total hours of clinical instruction, including 162 hours of clinicals with hands-on patient care at a long-term rehabilitation facility in Houston, Texas. Respondent's clinical hours did not include care of any live pediatric or maternity patients, and she never attended or completed any clinicals or courses in Florida.

13. Respondent passed Nursing Bridges's final exit examination in November 2019 and believed that she graduated from her program in December 2019. Nursing Bridges staff, however, informed Respondent she would not be processed for the Practical Nursing National Council Licensure Examination (NCLEX-PN) until after the failing students also passed the examination, which occurred in March 2020.

14. Respondent subsequently learned from Mr. Etienne and Ludnie Jean, who was associated with Jean's NCLEX Review, that she had purportedly been transferred from Nursing Bridges to Jean's NCLEX Review, then Quisqueya Health Care Academy, for NCLEX-PN processing.

15. Before taking the NCLEX-PN, Respondent received an official transcript from Quisqueya Health Care Academy signed by its dean and director, Gail Russ. Ms. Russ also, at some unknown time, completed an undated Board form called Affidavit for Graduation for Graduates in the USA and US Territories (Affidavit of Graduation).

16. Respondent's transcript indicated that she received a diploma after attending the Quisqueya Health Care Academy PN program, with a campus address in South Lake Worth, Florida, from December 10, 2018, to December 13, 2019, upon completing 562 hours of theory instruction and 788 hours of clinical instruction.

17. The Affidavit of Graduation attested that Respondent received a certificate/diploma in nursing after entering Quisqueya Health Care Academy, located in Lake Worth, Florida, on December 10, 2018, and completing graduation requirements on December 13, 2019.

18. Respondent did not attend Sacred Heart, the Quisqueya Schools, or Jeans NCLEX Review.

19. Based on conversations with Ms. Jean and Mr. Etienne, Respondent believed that her transfer from various schools, which she understood to be affiliated, was legitimate, and that she had completed the requirements to graduate from a Florida Board-approved nursing program.

20. Respondent never lived, worked, studied, or practiced nursing in Florida.

21. On March 2, 2021, Respondent took and passed the NCLEX-PN examination.

22. Respondent swore in her endorsement and renewal applications that she obtained her vocational/practical nursing certificate and graduated from the Quisqueya School of Nursing in Boynton Beach, Florida on December 13, 2019.

23. Applicants do not enter school addresses into Texas LVN license applications; rather, they are auto-generated when the school name is selected from a drop-down menu.

24. Respondent selected Quisqueya School of Nursing in her endorsement and renewal applications because Quisqueya Health Care Academy was not an option in the drop-down menu, and she believed the Quisqueya Schools were affiliated with one another and with Nursing Bridges, Sacred Heart, and Jean's NCLEX Review.

25. Respondent did not knowingly or recklessly make false representations in her endorsement and renewal applications, as she believed the representations were true based on conversations with school administrators.

26. Respondent did not have a duty to clarify the auto-populated address in the Board application forms or disclose additional information regarding her education history because it was not requested on the form and she believed her answers were accurate.

27. Respondent did not complete the program of study and educational requirements that the Florida Board approved for the Quisqueya Schools's PN program.

28. Respondent's provision of inaccurate information and answers in her endorsement and renewal applications regarding her status as a graduate of the Quisqueya School of Nursing in Boynton Florida, although unintentional, affected the Board's decision to issue her license.

29. The Board issued Respondent's license based on false, deceptive, or misleading information.

30. The Houston program that Respondent attended was not approved by the Board or the Florida Board, nor was it accredited by a national nursing accreditation agency that the Board determined to have acceptable standards.

31. Nursing Bridges, the Quisqueya Schools, Jean's NCLEX Review, and Sacred Heart, teaching in Texas, were not approved by the Board or Florida Board, nor were they accredited by a national nursing accreditation agency that the Board determined to have acceptable standards.

32. Respondent's nursing program was not substantially equivalent to a Board-approved program.

33. An LVN who is not properly trained can harm a patient.

34. Practicing nursing without the qualifying training is likely to deceive, defraud, or injure a patient or the public.

35. Respondent has been practicing nursing in Texas under her license since April 2021.

36. Respondent's unqualified practice of nursing could have endangered a client's life, health, or safety.

37. Respondent has never received any complaints while working as a nurse in Texas or from the Board or Florida Board.

38. After learning some Texas nurses, including Respondent, may be implicated in a federal investigation known as "Operation Nightingale" involving illegitimate or fraudulent diplomas, the staff (Staff) of the Board initiated a disciplinary action against Respondent and denied her renewal application.

39. Respondent timely requested a contested-case hearing before the State Office of Administrative Hearings (SOAH).

40. On December 19, 2023, Staff sent Respondent a Notice of Hearing and Formal Charges. On April 5, 2024, Staff sent First Amended Formal Charges to Respondent.

41. Together, the Notice of Hearing and First Amended Formal Charges contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted in the complaint or petition filed with the state agency.

42. SOAH Administrative Law Judge Shelly M. Doggett convened the hearing on the merits via Zoom videoconference on April 18, 2024. Assistant Attorney General Ernest C. Garcia represented Staff. Respondent appeared and was represented by attorney Adiah A. Oreyomi. The record closed on August 1, 2024, pursuant to Order No. 6.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code ch. 301.

2. SOAH has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.

3. Respondent received adequate and proper notice of the hearing on the merits. Tex. Occ. Code § 301.454; Tex. Gov't Code §§ 2001.051-.052.

4. Staff had the burden of proving that disciplinary action against Respondent's license was warranted, and Respondent had the burden of establishing any mitigating evidence. 1 Tex. Admin. Code § 155.427.

5. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

6. Staff did not meet its burden of proof to show that Respondent fraudulently or unlawfully obtained or furnished a nursing diploma, license, renewal license, or record in violation of Texas Occupations Code sections 301.451(1) and .451(3)(A).

7. Staff did not meet its burden of proof to show that Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(2) for fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing.

8. Staff did not meet its burden of proof to show that Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(5) for use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered.

9. Respondent practiced nursing under a diploma, license, or record that was signed or issued unlawfully or under false misrepresentation, in violation of Texas Occupations Code section 301.451(3)(B).

10. Respondent did not successfully complete and cannot be certified as a graduate of an approved program of vocational nursing. Tex. Occ. Code § 301.157(d).

11. Respondent was not qualified for licensure by endorsement as an LVN because her nursing program was not approved and she did not previously practice nursing in Florida or any other state. 22 Tex. Admin. Code § 217.5(a)(1).

12. Respondent is not qualified for licensure in Texas. Tex. Occ. Code § 301.260(a)(2).

13. Respondent is subject to discipline for violating chapter 301 of the Texas Occupations Code. Tex. Occ. Code § 301.452(b)(1).

14. By practicing nursing without holding the requisite educational qualifications and credentials, Respondent engaged in unprofessional conduct that may endanger a client's life, health, or safety. 22 Tex. Admin. Code § 217.12(4).

15. Respondent's provision of false, deceptive, or misleading answers in her license application, which affected the Board's decision to license her, and her

renewal application, constituted unprofessional conduct in the practice of nursing likely to injure the public. 22 Tex. Admin. Code § 217.12(6)(H), (I).

16. Respondent is subject to discipline for her unprofessional conduct. Tex. Occ. Code § 301.452(b)(1).

17. The Board may take disciplinary action against Respondent. Tex. Occ. Code §§ 301.451(3)(B), .452(b)(1); 22 Tex. Admin. Code § 217.12(4), (6)(H), (I).

18. Respondent's violation of Texas Occupations Code section 301.451(3)(B) constitutes a Second-Tier, Second-Level offense. 22 Tex. Admin. Code § 213.33(b), (c).

19. Respondent's unprofessional conduct under Texas Occupations Code section 301.452(b)(1) constitutes Second-Tier, Second-Level offenses. 22 Tex. Admin. Code § 213.33(b), (c).

20. The Board may consider the following as aggravating factors: potential harm to patients, clients, and the public; false representations were made regarding Respondent's knowledge, education, experience, credentials, or skills that would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the facts where such reliance could be unsafe; a potential threat to public safety; and the seriousness of the violations. 22 Tex. Admin. Code § 213.33(c)(1), (3), (14), (15), (18).

21. Respondent established and the Board may consider the following as mitigating factors: no evidence of any prior disciplinary action against Respondent in any jurisdiction; no evidence of actual patient harm or damage; and Respondent was not knowingly or willfully untruthful. 22 Tex. Admin. Code § 213.33(c)(1), (2), (6), (8).

VIII. RECOMMENDATION

The ALJ recommends that the Board revoke Respondent's license and deny her renewal application.

SIGNED SEPTEMBER 24, 2024

ALJ Signature:

Shelly M Doggett
Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 28, 2024

Ernest Garcia
Assistant Attorney General
Office of Attorney General

VIA EFILE TEXAS

Folasade M. Akinrolabu
c/o Adiah A. Oreyomi

VIA EFILE TEXAS

RE: SOAH Docket Number 507-24-01476; *Texas Board of Nursing v. Folasade Margaret Akinrolabu*

Dear Parties:

The Proposal for Decision (PFD) was issued in this case on September 24, 2024. Respondent Folasade Margaret Akinrolabu timely filed her Exception on October 9, 2024. The staff (Staff) for the Texas Board of Nursing (Board) did not file exceptions and did not submit a response to Respondent's Exception.

Respondent's Exception objects to and seeks to modify the recommended sanction. Specifically, Respondent argues that Respondent's license should be suspended, rather than revoked, because the PFD found that Respondent did not act fraudulently and was not knowingly or willfully untruthful, and because revocation is the "harshest" sanction authorized under the Board's penalty matrix. Moreover, Respondent claims suspension is appropriate because it has the same effect as revocation, as it would prevent Respondent from practicing under her current license until Respondent is found to have met the Board's requirements for reinstatement.

After considering Respondent's Exception, the Administrative Law Judge finds that no change to the recommended sanction is warranted. The PFD found that Respondent attended a nursing program in Texas that was not approved by the Board, not approved by the Florida Board of Nursing (FBON) or Florida Commission for Independent Education (FCIE), and did not meet the standards set by any of any of the purportedly affiliated programs in Florida, as on file with the FBON and/or FCIE. Respondent's transcript, Affidavit of Graduation (Affidavit), and Texas nursing license were, consequently, unlawfully issued because Respondent's program was not authorized to issue the transcript or Affidavit for Respondent as an attendee of the program in Texas. Having found that Respondent did not have the requisite credentials for licensure, it is not appropriate to allow Respondent to maintain that license—even in a suspended status—regardless of whether she personally acted fraudulently or knowingly.

The State Office of Administrative Hearings has concluded its involvement in the matter, and the case is now ready for action by the Board.

ALJ Signature:

Shelly M. Doggett

Shelly M. Doggett

Presiding Administrative Law Judge

CC: Service List