I do hereby certify this to be a complete, accurate and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Kristin K. Benton, DNP, RN
Executive Director
Texas Board of Nursing

DOCKET NUMBER 507-24-05489

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER RN 1051644,	§	**OF**
ISSUED TO	§	
ABIDEMI AFUSAT AMUDA	§	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: MARC M MEYER
2300 WOODFOREST PKWY, SUITE 600
MONTGOMERY, TEXAS 77316

HEATHER D. HUNZIKER
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

At the regularly scheduled public meeting on April 24, 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 found no exceptions were timely filed.

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.

Respondent attended Siena from May 2020 to June 2021 taking online classes. Siena was not approved by the Florida Board for remote instruction. If a Florida school wanted to temporarily allow specific courses to be held online during COVID, they were required to notify the state of Florida immediately and provide specifics and clinicals were still required to be in-person. Respondent spent only three days physically in the state of Florida, which would not have been enough time to complete 450 hours of clinicals required by the degree program outline. Therefore, Respondent's nursing program was not approved. The ALJ found that since the program was not "approved" she did not qualify for Texas licensure. Additionally, her failure to work in Florida is an additional basis making Respondent unqualified for licensure by endorsement.

The Board agrees with the ALJ's finding that by applying for licensure in Texas, Respondent provided information that was false, deceptive, or misleading in connection with the practice of nursing and has since been working in Texas as a Registered Nurse. Nursing practice under an unlawfully issued diploma is prohibited by the Nursing Practice Act.[1] 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 Registered Nurse License Number 1051644, previously issued to ABIDEMI AFUSAT AMUDA, 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 24th day of April, 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. 507-24-05489 (November 22, 2024), Exceptions Letter issued December 9, 2024.

[1] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 22, 2024

Austin Havens, TX OAG Staff Attorney **VIA EFILE TEXAS**

Marc M. Meyer, Respondent's Attorney **VIA EFILE TEXAS**

RE: SOAH Docket No. 507-24-05489; TBN No. CX2890852746; *Texas Board of Nursing v. Abidemi Afusat Amuda*

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. 507-24-05489 **Suffix: TBN**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
ABIDEMI AFUSAT AMUDA,
RESPONDENT

TABLE OF CONTENTS

SOAH Docket No. 507-24-05489 **Suffix: TBN**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
ABIDEMI AFUSAT AMUDA,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the registered nurse (RN) license (License) and deny the License renewal of Abidemi Afusat Amuda (Respondent), obtained by endorsement of her licensure by the State of Florida, on the bases that: (1) Respondent obtained her nursing associate degree through fraudulent means by purchasing a fraudulent diploma or transcript, and/or fraudulently misrepresented her nursing education in her license application; (2) Respondent lacks the requisite education or degree; and, thus, (3) Respondent's practice of nursing constitutes a grave risk to public safety. The Administrative Law Judge (ALJ) finds Staff failed to demonstrate fraud on Respondent's part but

recommends the Board revoke Respondent's License because she does not meet Board standards to practice nursing; she is violating a Board rule; and her continued practice presents a serious risk to patient or public safety and is likely to deceive, defraud, or injure a patient or the public.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Matters of notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law.

On September 24, 2024, State Office of Administrative Hearings (SOAH) ALJ Heather D. Hunziker convened a hearing on the merits via Zoom videoconference. Assistant Attorneys General Austin Havens and Katherine Johnson represented Staff. Attorney Marc M. Meyer represented Respondent, who appeared. The record closed on October 4, 2024, with the filing of briefing.

II. BACKGROUND

Respondent's Licensure. Respondent holds a Texas vocational nurse license (LVN) from 2018 that is not in dispute. She was licensed as an RN by the Florida Board of Nursing (Florida Board) on July 15, 2021.[1] On July 17, 2021, she applied for her License in Texas (Application) by endorsement based on her Florida RN license, indicating that she completed a Practical Nursing (PN) education program from

[1] Staff Ex. 6 at 100, 107.

Concorde Career College (Concorde), in Grand Prairie, Texas, on March 1, 2018;[2] and that she passed the NCLEX-RN[3] exam on July 14, 2021.[4] She received the License.[5] Respondent claims she qualified for her RN by attending a Florida-approved school, Siena Education Center LLC-ADN or Siena College of Health (Siena) in Lauderhill, Florida,[6] as she attested on her November 2, 2022 License renewal application (Renewal).[7]

FBI Operation. This case resulted from a law enforcement investigation by the Federal Bureau of Investigation (FBI) and the federal Health and Human Services Commission - Office of Inspector General (HHS-OIG), into nursing schools that were selling illegitimate nursing diplomas and transcripts (the FBI Investigation).[8] "Siena Education Center LLC, doing business as Siena College of Health" was named in the FBI Operation as a school that sold illegitimate nursing diplomas and transcripts.[9] Staff has alleged that Respondent was named in that investigation as part of the scheme.[10]

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[2] Staff Ex. 6 at 99.

[3] The NCLEX-RN is the nationwide standardized test for registered nurses administered by the National Council of State Boards of Nursing.

[4] Staff Ex. 6 at 99.

[5] Staff Ex. 2 at 65; Staff Ex. 6 at 99.

[6] Staff Ex. 12 at 163.

[7] Staff Ex. 7 at 116.

[8] Staff Ex. 8 at 125. *See Tex. Bd. of Nursing v. Omietimi*, SOAH Docket No. 507-23-18180, Proposal for Decision (PFD) (Nov. 20, 2023) (offering a full discussion of the investigation and its scope).

[9] Staff Ex. 8 at 125.

[10] Staff's First Amended Formal Charges (Formal Charges) (March 15, 2024) at 2.

Staff's Allegations. This case is both a disciplinary and licensure action, in which Staff advances three contentions.[11] First, Staff argues Respondent obtained the License through fraudulent means by purchasing a fraudulent diploma/transcript and/or fraudulently misrepresenting her nursing education in her Application. Committing fraud or deceit in obtaining a license can subject a licensee to Board sanctions, as can using a diploma, license, or record that has been fraudulently issued, counterfeited, altered, or obtained.[12] The ALJ finds Staff did not show Respondent committed this alleged misconduct and, thus, disciplinary action is not warranted on this factual record.

Staff's second allegation relates to Respondent's qualifications. In its second contention, Staff asserts Respondent's nursing program was unapproved and she did meet the requirements for licensure.[13] The ALJ finds Respondent's nursing program was not approved and she did not qualify for a Texas license.

Staff's third contention is that Respondent's practice of nursing under an unlawfully or fraudulently obtained diploma/license and without qualified training is likely to deceive, defraud, or injure the public; constitutes unprofessional conduct that may endanger a client's life, health, or safety; and presents a grave risk to the

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[11] *See* Formal Charges. Staff's Formal Charges list a single charge that is broken into three parts here for ease of analysis.

[12] Tex. Occ. Code §§ 301.451(1), (3), .452(b)(2), (5); *see* 22 Tex. Admin. Code (TAC) § 217.12(6)(H). For purposes of this PFD, citations to licensing requirements will be to the rule in effect at the time of Respondent's Application that resulted in her RN licensure, July 17, 2021.

[13] Staff also argued and presented evidence that Respondent's nursing program did not have substantially equivalent education standards to a Texas-approved nursing program; however, Respondent did not argue that she qualified by substantially equivalent education and, as discussed below, the question is not relevant to applications by endorsement.

public.[14] A person is subject to disciplinary action for: violation of the Texas Nursing Practice Act (Act)[15] or a rule thereunder; fraud or deceit in procuring a nursing license; use of a nursing license, diploma, or transcript that has been fraudulently purchased, issued, counterfeited, or materially altered; or unprofessional conduct likely to deceive, defraud, or injure a patient or the public.[16] The ALJ finds Respondent's practice without qualifications is a serious risk to patient or public safety and is likely to deceive, defraud, or injure a patient or the public.

III. APPLICABLE LAW

A. BURDEN OF PROOF

The standard of proof is a preponderance of the evidence.[17] Who bears the burden of proof depends on the statute (here, the Act), the Board's rules, and documented agency policy.[18] The ALJ may also consider other factors, such as which party seeks affirmative relief and whether a party would be required to prove a negative.[19] Relevant here, the ALJ may weigh the parties' "relative access to and

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[14] *See* 22 TAC § 217.12(4), (6)(H).

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

[16] Tex. Occ. Code § 301.452(b)(1), (2), (5), (10).

[17] *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).

[18] 1 TAC § 155.427.

[19] 1 TAC § 155.427(3)-(5).

control over information pertinent to the merits of the case."[20] Staff seeks disciplinary action (revocation). On Staff's allegations, the burdens were as follows:

- Staff had the burden of proving Respondent's fraud or deceit in obtaining a license;
- Staff had the burden of identifying the legal and factual bases to show that Respondent's nursing program was unapproved and not substantially equivalent to Texas standards;
- Staff had the burden of proving the existence of facts justifying license revocation and renewal denial—producing evidence that Respondent used a nursing license, diploma, or transcript that was fraudulently purchased, issued, counterfeited, or materially altered; and/or Respondent's practice of nursing constitutes unprofessional conduct and is likely to deceive, defraud, or injure the public;
- Respondent had the burden to prove any mitigating factors.[21]

B. LICENSING REQUIREMENTS

The Board is responsible for the regulation of nurses pursuant to the Act. A nurse may not practice nursing without a Board-issued license or under a diploma, license, or record that was (a) obtained unlawfully or fraudulently or (b) signed or issued unlawfully or under false representation.[22]

A person licensed in another state may qualify for a license by endorsement in Texas by submitting proof of initial licensing by examination and evidence that the

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[20] 1 TAC § 155.427(2).

[21] 1 TAC § 155.427.

[22] Tex. Occ. Code §§ 301.251(a), .451(3).

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."[23] By rule, the Board has 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 licensure request.[24] However, applicants for licensure by examination (for graduates of nursing education programs within the United States) may, alternatively, have graduated from "a program with substantially equivalent education standards" to a Texas-approved nursing program.[25] For professional nursing (equivalent to RN) programs, substantial equivalency may be found if:

> (i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure professional nursing program of study that awards a nursing diploma or degree upon completion;
>
> (ii) the program includes general education courses providing a sound foundation for nursing education for the level of preparation;
>
> (iii) 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

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[23] Tex. Occ. Code § 301.260(a)(2). RN applicants must submit to the Board a sworn application that demonstrates their qualifications, accompanied by evidence that they have: (1) good professional character related to the practice of nursing; (2) successfully completed a program of professional nursing education approved under Texas Occupations Code section 301.157(d); and (3) passed the jurisprudence examination approved by the Board. Tex. Occ. Code § 301.252(a).

[24] 22 TAC § 217.5(a)(1). This PFD cites to the rules in effect at the time of Respondent's Application, July 17, 2021; however, in October 2022, section 217.5(a)(1) was amended to require "Graduation from an approved Texas nursing education program *or a program with substantially equivalent education standards to a Texas approved nursing program as defined below.*" (emphasis added). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022) (adopting the rule as produced in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)). *See also* Tex. Occ. Code § 301.260(a).

[25] 22 TAC § 217.2(a)(4).

use a systematic approach to clinical decision-making and safe patient care across the life span; and

(iv) for baccalaureate degree nursing programs, nursing courses must also include didactic content and supervised clinical learning experiences, as appropriate, in community, research, and leadership.[26]

A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that is: (i) approved by the Board; (ii) accredited by a national nursing accreditation agency the Board has determined has acceptable standards; or (iii) approved by the state board of nursing of another state and the Board.[27]

Staff charged Respondent with not completing any Florida-approved nursing education program. Specifically, Staff alleged that Siena was only approved by the State of Florida as an in-person nursing program to be administered and taught on its Florida campus, and to include at least 450 hours of in-person clinicals; and that Respondent's classes were online, except for three days in Florida of simulation on a mannequin.[28]

Additionally, Staff's Formal Charges identified the following shortcomings in Respondent's nursing education:

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[26] 22 TAC § 217.2(a)(4)(A). As of 2022, these requirements were moved to 22 TAC section 217.5(a)(1)(A). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022).

[27] Tex. Occ. Code § 301.157(d).

[28] Formal Charges at 1-2.

> Respondent did not receive supervised clinical experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health. . . . Respondent only engaged in a maximum of 28.5 clock hours, falling far below a substantially equivalent education. Respondent's didactic courses also failed to provide a substantially equivalent education.[29]

C. DISCIPLINE

Pursuant to the Act, a nurse is subject to denial of a license or disciplinary action for, among other bases:

- A violation of the Act or a Board rule or regulation;
- Fraud or deceit in procuring or attempting to procure a RN license;
- Using a nursing license, diploma, or permit, or transcript that has been fraudulently purchased, issued, counterfeited, or materially altered; or
- Unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.[30]

The Board has adopted rules to protect clients and the public from incompetent, unethical, or illegal conduct of licensees, which identify "behaviors in the practice of nursing that are likely to deceive, defraud, or injure clients or the public" as unprofessional conduct, including but not limited to:

- Conduct that may endanger a client's life, health, or safety.

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[29] Formal Charges at 3.

[30] Tex. Occ. Code § 301.452(b)(1), (2), (5), (10).

- Providing information that was false, deceptive, or misleading in connection with the practice of nursing. [31]

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.[32] When determining the proper sanction, 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 Board and has previously complied with applicable law; (2) the seriousness of the violation; (3) the threat to public safety; and (4) any mitigating factors.[33] The Board's schedule of disciplinary sanctions is a disciplinary matrix.[34] The matrix categorizes violations into tiers and sanction levels based on the seriousness of the offense and risk of harm to patients or the public.[35]

IV. EVIDENCE

Staff called Respondent as a witness and presented testimony from Jason H. Bowman, Danielle Green, and Dr. Susan Sportsman. Respondent testified on her own behalf and called Immaculata Keke, but did not offer any exhibits. The

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[31] 22 TAC § 217.12(4), (6)(H).

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

[33] Tex. Occ. Code § 301.4531(b).

[34] 22 TAC § 213.33(b).

[35] 22 TAC § 213.33(b).

ALJ admitted eight exhibits for Staff,[36] and took notice of another exhibit per Texas Government Code section 2001.090(a).[37] Additionally, the ALJ takes notice of the Information in Case No. 23-60013-CR-Moreno/Strauss, *United States of America v. Eunide Sanon*, filed with in the United States District Court for the Southern District of Florida on January 23, 2023 (Federal Information), which is a charging document alleging fraud against Eunide Sanon, in conspiracy with others.[38]

A. SUMMARY AND DOCUMENTARY EVIDENCE

In Respondent's Application, she indicated that she completed a PN education program from Concorde and that Concorde was her "Education Basis for Licensure."[39] Later, on her Renewal, she stated that she completed her professional nursing education at Siena.[40]

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[36] Staff's admitted exhibits consisted of: Affidavit of Anthony Diggs with background check documents (Staff Ex. 2); Affidavit of Anthony Diggs with LVN Application (Staff Ex. 6); Affidavit of Anthony Diggs with LVN Renewal (Staff Ex. 7); Affidavit of Matthew Lane (Staff Ex. 8); Affidavit of Sherri Sutton-Johnson (Staff Ex. 10); Respondent's Transcript (Staff Ex. 12); Sportsman CV (Staff Ex. 13); 2020 FCIE Memos re Temporary Distance Education (Staff Ex. 16).

[37] The noticed exhibit was a Board memo dated March 31, 2020, entitled Managing Clinical Experiences During the COVID-19 Pandemic (Staff Ex. 15).

[38] During the hearing, Staff moved for official notice to be taken of the Federal Information; and the ALJ held the record open for Staff to file the Federal Information and for briefing on the topic. Order Memorializing Hearing, Extending the Record Close Date, and Requiring Filing (Sept. 26, 2024). Staff filed the Federal Information, but no briefing; and Respondent filed briefing. Federal Information (Sept. 27, 2024); Respondent's Brief in Response to the Order Memorializing Hearing, Extending the Record Close Date, and Requiring Filing (Oct. 4, 2024). In accordance with Texas Rule of Evidence 201, the ALJ takes notice of the existence of the Federal Information, but does not take notice of the truth of the factual statements and allegations contained therein. *See Freedom Commc'ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012) ("Under this standard, a court will take judicial notice of another court's records if a party provides proof of the records," citing *MCI Sales and Serv., Inc. v. Hinton*, 329 S.W.3d 475, 497 n.21 (Tex. 2010)); *Kenny v. Portfolio Recovery Assocs., LLC*, 464 S.W.3d 29, 34 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (citing *Guyton v. Monteau*, 332 S.W.3d 687, 693 (Tex. App.—Houston [14th Dist.] 2011, no pet.)).

[39] Staff Ex. 6 at 99.

[40] Staff Ex. 7 at 116.

As a result of the FBI Investigation, the FBI informed the Board:

> Siena was located in Lauderhill, Florida, and issued licensed practical nursing (LPN) diplomas and transcripts and Associate Degree in Nursing (ADN) diplomas and transcripts to individuals who did not receive instruction from Siena and did not receive the clinical training required to earn an LPN or ADN transcript and diploma. However, some graduates of Siena did complete the required instruction at Siena and the clinical training necessary to earn an LPN or ADN transcript and diploma under the supervision of Siena.[41]

The FBI's letter identifies Eunide Sanon as the owner of Siena.

Siena's program outline for its occupational associate degree in nursing indicates: (1) course delivery was on campus, as opposed to online or by correspondence; (2) the program was 90 weeks in length, totaling 74 semester hours, with a minimum of 15 general education hours; (3) the objective of the program was to prepare students for employment as RNs; and (4) the program consisted of at least fifty percent clinical training.[42] Siena's course breakdown lists 15 hours of "Pre-Requisites" such as Anatomy and Physiology, Math for Healthcare Professionals, and Medical Terminology; 44 hours of "Major Core Courses" with clinicals, including Fundamentals of Nursing Concepts, Pharmacology, Basic Adult Healthcare, Childbearing Families, Advanced Adult Healthcare, Nursing Leadership and Management, and Mental Health Nursing; and 15 hours of "General Education" such as General Psychology and Human Growth and Development.[43]

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[41] Staff Ex. 8 at 125.

[42] Staff Ex. 10 at 204-05.

[43] Staff Ex. 10 at 207.

Respondent's Siena transcript lists her program dates as February 11, 2019 to June 19, 2020; and it reflects that she earned 74 credits and was awarded the degree of Associate of Science in Nursing.[44]

Respondent's receipts for payments to Siena reflect they were made to Cashiers "Fendy" and Eunide Sanon, from May 2020 to December 2020.[45]

B. TESTIMONY OF RESPONDENT

Respondent explained her background. She was born in Nigeria and came to the United States in 2003. She was first a Certified Nursing Assistant (CNA), then became a medication technician/medication aid, then got her LVN in 2018, and then became an RN. She now works as an RN in Texas, under license number 1051644, as a nighttime nurse at Legacy of Midtown Park, where she supervises LVNs and works with other RNs. She said she became an RN because she wanted to "upgrade" herself. To become licensed as an LVN or RN she had to pass an ethics exam. She said she has kept up with her continuing education requirements since she was licensed and has never been reported to the Board while practicing as an LVN or RN.

She testified that she has never lived or worked in Florida; rather, she has lived in Dallas, Texas for more than ten years, and worked there since 2019. She was referred to Siena by a coworker friend who moved from Florida to Texas. She called the Florida Board to enquire about Siena, just before commencing classes; and she

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[44] Staff Ex. 12 at 263.

[45] Staff Ex. 12 at 264-70.

was told the school was approved by the Florida Board. Additionally, she saw Siena listed as an approved school on the Florida Board's website.

Respondent applied to Siena in May 2020, started school there a few weeks afterwards, and graduated in May or June 2021. She testified that her transcript was issued in 2021. When Staff pointed out to Respondent that her transcript reflects program dates of February 2019 to June 2020,[46] she testified that the transcript dates were wrong and that she called Siena to try to get it revised but the school closed. She said this is the only transcript she has; and it was what she submitted to the Florida Board, but not the Board. She further explained that she listed June 2020[47] as her graduation date on her Renewal because that is what was on the transcript. She was not aware of Siena telling the Florida Board that they admitted their last students in March 2020.

As for payment, Respondent testified that her education at Siena cost her around $17,000, which she paid to the school. She explained that she only paid the owner/administrator, Ms. Sanon, one time; and, after that, she paid directly to Siena.[48]

Respondent stated that all her classes at Siena were online, using PowerPoint and a textbook; and she did not have in-person clinicals with actual patients because

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[46] Staff Ex. 12 at 263.

[47] Staff Ex. 7 at 116.

[48] *See* Staff Ex. 12 at 266-69.

it was during COVID.[49] Clinicals also used PowerPoint and textbooks. She never had child patients or pregnant or maternity patients, and never went to any hospitals or nursing homes for clinicals. This contrasted with her (previous) LVN training, which had in-person clinicals with live patients, and which took place in a healthcare setting.

As for her Application, Respondent testified that it was for endorsement of her Florida license.[50] She took her NCLEX in Texas in July 2021; and she applied for Florida licensure in July 2021, but never sought a Florida job or Florida housing. She stated that, although she listed a PN at Concorde on her Application,[51] there was no error in that because Concorde is where she completed her PN. She explained that she was not hiding that she attended Siena, but she did not include Siena on the Application "because I wasn't asked"—the Application only asked about her *previous* license, which was her PN training at Concorde for her LVN. Further, because she felt her listing of Concorde instead of Siena as the school on her Application was not an error, since the Application did not ask for her RN school, she made no attempt to "correct" it; and the Board never contacted her about that information. She listed Florida as the state that made her eligible to take the NCLEX;[52] and designated Siena on her Renewal.

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[49] *See* Staff Ex. 15 (March 2020 Board guidance document regarding nursing clinical education during COVID); Staff Ex. 16 (March 2020 FCIE memo regarding temporary distance education approval during COVID).

[50] *See* Staff Ex. 6 at 90.

[51] Staff Ex. 6 at 99.

[52] Staff Ex. 6 at 99.

Respondent confirmed that her RN license allows her to work with patients without direct supervision, unlike an LVN license; and she agreed that an unqualified RN can cause a serious risk of harm to a patient. She said she is the only RN working on her floor and there is an LVN who reports to her.

C. TESTIMONY OF MR. BOWMAN

Mr. Bowman is an educational policy analyst at the Florida Commission on Independent Education (FCIE), the agency responsible for the licensure of all independent post-secondary educational institutions operating in Florida, along with the Florida Board. He stated that all post-secondary schools must be licensed annually and are subject to Florida's statutes and rules. Part of his job is reviewing schools' applications, with their catalogues, program outlines, faculty listings, financial statements, clinical affiliation agreements, and other documents. He testified to his personal knowledge regarding the status of nursing education programs in Florida, Florida's accreditation statutes and rules, and the accreditation of Siena.

Mr. Bowman discussed Siena's degree program outline for its associate of science,[53] which he said was to prepare students for RN licensure. He pointed out that it shows Siena was approved for *on-campus* delivery, rather than online or by correspondence; a program length of 90 weeks, which he noted is more than a year; and 74 semester hours with at least 15 general education hours.[54] He testified that

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[53] *See* Staff Ex. 10.

[54] *See* Staff Ex. 10 at 204.

the Siena program was approved with "900 contact hours," meaning didactic instruction, lab instruction, or clinicals; and it was not approved for remote learning. The Siena campus approved by the FCIE was in Lauderhill, Florida, in Broward County. He noted that Siena's program description, which he said should give information about how the program is delivered, says the RN program "is accomplished in six semesters and is consisted of at least 50 percent clinical training."[55] According to Mr. Bowman, that means that half of the program—or 450 hours—should be conducted in a clinical setting such as a hospital, community clinic, or doctor's office, where the student receives hands-on training with patients.

As for the impact of COVID nursing programs, Mr. Bowman testified that institutions were asked to notify the FCIE immediately of their plan for distance education, following the FCIE's issuance of its March 2020 memorandum on COVID crisis response;[56] and many schools contacted the FCIE to do so, with varied plans. However, Mr. Bowman said that he was the contact for such notification and Siena did *not* notify the FCIE, although Siena communicated with him about other matters. He explained that FCIE's reasoning for asking schools to communicate their plans was that it wanted to know what schools were doing. That way the FCIE

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[55] *See* Staff Ex. 10 at 205.

[56] *See* Staff Ex. 16. The memo stated:

> In light of current circumstances, the [FCIE] is temporarily approving distance education delivery for specific courses at licensed institutions. All institutions providing temporary distance education must notify the [FCIE] immediately. This information below must be provided to the [FCIE] no later than close of business, Friday, March 20, 2020. Please submit your information via email to your program specialist. Your information will be reviewed by [FCIE] staff and we will request additional information as needed.... **Please be advised - only theory courses can be temporarily online. Clinicals, practicums and externship experiences must be in person.** Staff Ex. 16 at 319 (emphasis in original).

could track whether any of the methods of program delivery would cause concern, could respond to or reject particular practices, and could supervise schools and hold them accountable.

Mr. Bowman reiterated that Siena's nursing programs were approved for in-person nursing education only, not instruction online or outside of Florida. Further, instruction or clinicals outside of Florida would have been outside of the FCIE's purview.

Mr. Bowman testified that Siena informed him it had been terminated by the Florida Board in 2019, with final termination issued in early 2020. He explained that when a program closes, voluntarily or otherwise, they begin a "teach-out," continually reporting to the FCIE until that is complete; then, once the program is completely "taught out" the FCIE removes that program from the school's offerings. He said that, as of April 2020, Siena was in teach-out of its RN program, and as of October 2020 it had three active cohorts: one that started in January 2018, one in May 2019, and one in January 2020. Siena notified the FCIE of closure of its RN program in October 2021. Mr. Bowman concluded, "Siena is a closed institution."

Mr. Bowman observed that, if Respondent participated in no hands-on clinical experience in any clinical setting and if she attended a program that lasted only one year, then that would not be a consistent with the program FCIE approved. And he noted that, if Respondent alleges she started in May 2020, that is not one of those cohorts.

D. TESTIMONY OF MS. GREEN

Ms. Green is an assistant director of enforcement with the Board and testified as to the Board's response to the FBI Investigation. She said the Board became aware that Siena was implicated in the FBI Investigation in January 2023—after Respondent's Application. Before that, "there was no reason for the Board to know that Siena wasn't properly credentialed." The Board began to investigate Respondent when her name appeared on the FBI's list of Siena students. Ms. Green said the Board's mission is "to protect the public from nurses that are not competent to practice safely in how they interact with the public of Texas;" and the Board's investigation of Respondent was consistent with that mission.

Ms. Green pointed out that Respondent's Application represented that she got her PN from Concorde, whereas her Renewal lists Siena. However, Ms. Green also testified that both the Application and the Board's licensure portal—which the Board relies on when it considers an application—show Respondent was registered first in Florida and she indicated to the Florida Board that she graduated from Siena.

Ms. Green noted that the Board's endorsement application lists and/or references the coursework requirements, including the clinical areas required, to be attained for RN licensure; and that applicants are required to attest to meeting those requirements.[57] In her opinion, had the Board known Sienna provided "subpar"

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[57] *See* Staff Ex. 6 at 103 (Application checkbox, stating: "I attest that I understand & meet all the requirements to practice for the type of licensure requested, as listed in 22 Texas Administrative Code, Chapter 217 (Licensure, Peer Assistance and Practice) and §§213.27 [sic], 213.28. 213.29 and 213.33. Further, I understand that it is a violation of the 22 Texas Administrative Code, §&#167 [sic]; 217.12 (6)(I) and the Penal Code, sec 37.10, to submit a false statement to a government agency").

education at the time of her Application, it would not have approved her Application; and the Board would not accept Respondent's credentials, today, for a new license. Nevertheless, she said she was not aware of any complaints or allegations of improper nursing care by Respondent.

E. TESTIMONY OF DR. SPORTSMAN

Dr. Sportsman is an expert consultant in nursing education in Texas, and she testified about RN requirements. She said applicants may graduate from an approved nursing education program or a program substantially equivalent to such standards—meaning the school must have essentially the same requirements. As described in 22 TAC sections 217.2 and .5, an RN applicant must complete a program with didactic and clinical instruction, including in: geriatrics, obstetrics, pediatrics, psychiatric/mental health, and medical/surgical. Courses must include developing clinical judgment, issues around medications, and culture and communication, among other topics.

Dr. Sportsman explained that, for every credit hour, students must have three hours of clinicals. Clinicals need to be in-person, working on actual patients, with faculty supervising the students. Working with real people, in real situations, is important for the nurse to develop clinical judgment. While students cannot see everything at clinicals, Dr. Sportsman said, it helps them learn to make assumptions and know what to take care of. She stated, "students need that confidence in clinical judgment to be able to go out and safely provide care." She testified that she consults across the country and even in Canada but has never seen a program that would allow a student to graduate with zero hours of in-person clinical experience.

Dr. Sportsman described a review done by the Board of the number of hours of hands-on clinical practice in both PN/LPN to ADN, and ADN to bachelors of nursing, to get the mean median minimum and maximum numbers of hours in clinical practice, taking the numbers from the data that nursing schools submit to the Board each year. That number was around 500 hours of clinical experience, and about 500 hours of the didactic, for an associate degree program. She said, while the Board does not require a specific number of hours, it wants to be sure that nursing schools are producing safe practitioners, keeping in mind that nursing is complex and covers all parts of the body. She testified that a licensed nurse with a lack of education results in a serious risk to patient or public safety in Texas.

Regarding Respondent's nursing education, Dr. Sportsman found her lack of clinical experience with real patients troubling and was also concerned that it was hard to tell how much of it was using a review book instead of a textbook. Dr. Sportsman noted that Respondent had no clinical experience in her documentation; instead, she had three days' worth of simulation and other learning activities, when she went to Siena's Florida campus. However, Dr. Sportsman scoffed, "three days is certainly not the same as 500 clinical hours." She also noted that Respondent's program was "shorter than most" and did not appear to cover the requisite topics. She opined that it is not possible Respondent received the substantial equivalent of a Texas approved nursing education; and that, had the Board known in 2021 that Siena was not substantially equivalent to a Texas approved program, it would not have licensed Respondent as an RN. Moreover, she said the Florida Board and FCIE did not seem to provide proper oversight of Siena in 2021.

Dr. Sportsman concluded that Respondent not having graduated from any approved nursing education program results in a serious risk of harm or injury to patient or public safety, because nurses are "the first line of defense for patients." Further, because Respondent works in a long-term care living facility, she said there is an extra level of risk since patients are mostly elderly or otherwise compromised and "it does not take much for that type of patient to have a problem in very rapid time." At such a facility, assessment skills like those learned in clinicals are critical. Dr. Sportsman added that one's LVN experience would not provide the clinical judgment needed for an RN, because the scope and tasks of the practice are different. In sum, given her nursing education, Dr. Sportsman said Respondent should not be licensed as a Texas RN.

F. TESTIMONY OF MS. KEKE

Ms. Keke has a degree in nursing education; has been a licensed RN in Texas since 2016; and has worked with Respondent at a rehabilitation facility with assisted living and a nursing home. She testified that she has not seen any issues in working with Respondent that would indicate Respondent was not adequately trained; and she has not had any issues regarding Respondent's nursing practice. She described Respondent as "a good nurse." On cross-examination, she agreed that her clinicals in nursing school involved live patients.

V. ANALYSIS

A. RESPONDENT DID NOT COMMIT FRAUD

Staff alleged Respondent committed fraud or deceit in procuring her license[58] by purchasing a fraudulent diploma/transcript, and/or fraudulently misrepresenting her nursing education in her Application. Staff did not prove these allegations.

1. No Fraudulent Purchase of Degree

Staff asserts that the FBI Operation named Respondent as a person who received a fraudulent degree. However, the record is thin on evidence that Respondent was involved in such a scheme. The closest Staff's evidence comes is Mr. Bowman's testimony that Siena reported to the FCIE that it closed after the completion of its last active cohort, which started in January 2020—meaning that Respondent could not have begun her studies there in May 2020.

Contrary to Staff's assertion, Respondent testified credibly that: (1) she believed Siena was approved in Florida, having been referred there by a coworker and confirmed the school's status with the Florida Board; (2) she was actually enrolled in Siena, made payments to the school, and attended classes online; and (3) she did not question the legitimacy of holding classes and clinicals online because it was during COVID. In addition to her testimony, such evidence includes her receipts for November and December 2020 payments to Siena. The preponderant

[58] Tex. Occ. Code §§ 301.451(1), .452(b)(2).

evidence did not show that Respondent committed fraud by purchasing an unauthorized degree.

2. No Fraud in Misrepresenting Her Nursing Education

Alternatively, and somewhat vaguely, Staff alleges that Respondent committed fraud by listing her graduation from Concorde, in Texas, on her Application and later changing it to Siena in her Renewal; using a transcript that dates her program from February 2019 to June 2020; and/or by failing to mention that her classes were online, when Siena was not approved for remote instruction or clinicals. Yet, Respondent did not fraudulently misrepresent her nursing education, as explained below.

Neither the Act nor Board rules appear to provide a definition of fraud. Therefore, turning to the common law is appropriate. An element of common law fraud is that a speaker, when making a representation, knew that the representation was false or was reckless in making the representation without knowledge of its truth.[59]

In this case, the evidence does not establish that, when Respondent listed Concorde on her Application to obtain her License as she admits doing, the representation was false. Instead, as she explained, she truthfully answered the

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[59] *Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998) ("A fraud cause of action 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 injury.'"); *see also Fraud,* O'Connor's Texas Causes of Action Ch. 12-A § 1 (2023 ed.) (collecting cases); *Fraud*, Black's Law Dictionary (11th ed. 2019) (providing two definitions, with one requiring a knowing misrepresentation and the other requiring a reckless misrepresentation).

Application's request for her "Initial Registered/Professional Nursing Education,"[60] which she thought referred to her initial PN education at Concorde that led to her LVN licensure. She also truthfully listed her state of licensure for endorsement as Florida—obviously referencing something other than Concorde, which is Texas school.[61] Ms. Green testified that the Board's licensure portal, which it relies upon in considering applications, shows Respondent was registered first in Florida and indicated to the Florida Board that she graduated from Siena.

The evidence also does not establish that Respondent committed fraud in using a transcript that dated her program from February 2019 to June 2020, even coupled with the Application's catch-all attestation.[62] As she testified, the Application was for endorsement of her Florida license, which correctly listed her graduation from Siena. Moreover, although she said she completed Siena's program in 2021, not 2020, she testified that she had attempted to get the transcript's clerical error changed but the school closed before that could happen and she listed her graduation date to the Board as June 2020 because she thought it had to match her transcript. Furthermore, there is no evidence that the June 2020 graduation date, versus a June 2021 graduation, was material in inducing Respondent's licensure, given that Siena did not reportedly close until October 2021 and that Respondent reported passing the NCLEX in July 2021.

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[60] Staff Ex. 6 at 98.

[61] Staff Ex. 6 at 100.

[62] Staff Ex. 6 at 103 ("I understand that it is a violation of the 22 Texas Administrative Code, §§ [sic] 217.12(6)(I) and the Penal Code, sec 37.10, to submit a false statement to a government agency").

Lastly, the evidence does not establish that Respondent made a recklessly or intentionally false representation in representing that Siena was an approved school, when its courses were only online. Respondent acknowledges attending her classes and clinicals online from Texas. And, as Mr. Bowman testified, Siena was not approved for remote coursework or clinicals, even under Florida's temporarily loosened COVID guidelines, since the school never submitted any plan for remote classes. However, Respondent testified that she had good reason to believe Siena was approved in Florida, as discussed above; she attended the course during the period when classes at some Florida schools were remote, with regulatory approval, due to COVID; she graduated from Siena; and she met the requirements of an RN. The circumstantial evidence supports this belief—Respondent passed the NCLEX exam and the evidence indicates she has had no reported issues during her subsequent RN practice. Furthermore, Mr. Bowman testified that Siena was licensed by FCIE and approved by the Florida Board—for at least one cohort—through the month Respondent began classes, and did not close until after the date Respondent said she completed her program, May or June 2021. And Respondent testified she confirmed with the Florida Board that Siena was approved and was unaware of Siena's subsequent closure. In short, she had no reason to believe Siena was not approved for the course she completed.

Because Respondent did not commit fraud or deceit in procuring her license, the ALJ finds Staff did not demonstrate that Respondent violated Texas Occupations Code section 301.451(1) or is subject to discipline under Texas Occupations Code section 301.452(b)(2) or (5). Thus, disciplinary action is not warranted on this factual record.

B. RESPONDENT IS NOT QUALIFIED FOR A TEXAS RN LICENSE

Staff alleged that Respondent's nursing program was unapproved and, therefore, Respondent lacked the requisite education or degree for licensure. Further, Staff alleged that Respondent did not qualify for endorsement because she never worked in Florida.

1. Respondent's Nursing Program Was Not Approved

Respondent testified that she attended Siena, from May 2020 to May or June 2021, taking classes online from Texas due to the COVID situation at that time. Mr. Bowman testified that Siena was not approved by the Florida Board to for the type of instruction Respondent claims to have received for her RN qualification. Siena's degree program outline indicates instruction was to be in-person, with 50 percent clinicals. Although Staff Exhibit 16 makes clear that the FCIE temporarily approved distance education delivery for specific courses in light of COVID, institutions intending to take advantage of that offer were required to notify the FCIE immediately and provide specifics, and clinicals were still required to be in-person. As Mr. Bowman testified, Siena did not give the requisite notice. Additionally, Mr. Bowman was very clear that Siena was only licensed and approved by the Florida Board for a professional nursing program *in Florida*, for students who completed the course of study on campus *in Florida*, and instruction outside of Florida was outside the scope of FCIE approval. Furthermore, Siena's approved degree program outline includes 450 hours of clinicals, which Dr. Sportsman made clear could not have been satisfied in the three days Respondent spent in Florida for the program. It is clear that Respondent's Siena coursework was outside the scope of FCIE approval—both because it was online and because the program taken by Respondent did not match

the description of the approved program (which would have included clinicals and additional hours of coursework). Therefore, the ALJ finds that Respondent's RN nursing program was not approved.

2. Respondent Did Not Qualify for Licensure by Endorsement

At the time of Respondent's Application, an applicant who passed the NCLEX could qualify for licensure by endorsement from another state by practicing there and graduating from an approved program, or could qualify for licensure by examination by completing a program with substantially equivalent education standards to a Texas-approved nursing program.[63] By definition, for professional nursing programs, substantial equivalency requires the program be approved.[64] In other words, whether qualifying for licensure by examination or by endorsement, at the time Respondent applied for her license, she had to have completed an approved program. As discussed above, she did not. Therefore, she did not qualify for Texas licensure.

Additionally, Respondent was licensed by endorsement of her Florida license.[65] Licensure by endorsement requires the applicant to have practiced in the endorsing state. The evidence indicates that Respondent never practiced in Florida;

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[63] Tex. Occ. Code § 301.260; 22 TAC §§ 217.2(a)(4), .5(a)(1). Staff argued and presented evidence that Respondent's nursing program did not have substantially equivalent education standards to a Texas-approved nursing program; however, because Respondent did not claim to have qualified via substantially equivalent education or to have applied for licensure by examination, the question of whether her program was substantially equivalent is relevant only to her license renewal, as will be discussed below.

[64] 22 TAC § 217.2(a)(4)(A)(i).

[65] *See* Staff Ex. 6 at 90 (Application title: "RN Endorsement Application for Graduates of U.S. Programs"), 97 ("Application Type: Endorsement RN . . . Please indicate the jurisdiction that issued your initial license: Florida").

on the contrary, she testified she never lived in Florida, never intended to work in Florida, has lived and worked in Dallas for more than ten years, and applied for Texas licensure less than one month after becoming licensed in Florida. Therefore, her failure to work in Florida is an additional basis making Respondent unqualified for licensure by endorsement. In short, Respondent did not qualify for Texas licensure.

C. RESPONDENT'S UNQUALIFIED PRACTICE OF NURSING WITH A LICENSE ISSUED UNDER FALSE REPRESENTATION IS UNPROFESSIONAL CONDUCT AND VIOLATES THE ACT AND BOARD RULES

Staff alleged that Respondent practiced under an unlawfully or fraudulently obtained diploma or license and without qualified training; that Respondent's practice without proper training is likely to deceive, defraud, or injure the public; and that this constitutes unprofessional conduct that may endanger a client's life, health, or safety.

A person may not practice nursing under a diploma, license, or record that was obtained unlawfully or fraudulently, or signed or issued unlawfully or under false representation.[66] Moreover, unprofessional conduct that is likely to deceive, defraud, or injure clients or the public includes: (1) conduct that may endanger a client's life, health, or safety; and (2) providing information which was false, deceptive, or misleading in connection with the practice of nursing.[67]

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[66] Tex. Occ. Code § 301.451(3).

[67] 22 TAC § 217.12(4), (6)(H).

1. Violation of the Act

As discussed above, Respondent represented in her RN Application materials that she attended Concorde and/or Siena (depending on whether one looks at the answer in her Application or the transcript provided with it). However, her program at Concorde was not for her RN, but her LVN; and the Siena program she took part in was not the Florida Board-approved version, given its remote instruction and failure to meet 450 hours of in-person clinicals. Respondent's representations led to her being licensed to practice nursing in Texas—Ms. Green and Dr. Sportsman testified that if the Board had known of Sienna's "subpar" education at the time of the Application it would not have licensed her. In other words, Respondent provided information that was false, deceptive, or misleading (albeit unwittingly, as also explained above) in connection with the practice of nursing. Additionally, as Respondent testified, she has been working in Texas as an RN.

The ALJ finds that Respondent has been practicing nursing under a license that was issued under false representation, violating the prohibition in Act section 301.451(3)(B). Therefore, denial of her license renewal or disciplinary action are authorized under Act section 301.452(b)(1), for her violation of the Act. However, as explained above, since there is no evidence of fraud or deceit on Respondent's part, the ALJ finds that discipline is not authorized under Act section 301.452(b)(2) or (5).

2. Unprofessional Conduct

Respondent has been practicing without the requisite education. As explained above, her Siena course did not match the requirements approved by the Florida

Board. Dr. Sportsman, an expert in nursing education, explained that, to be qualified as RNs, nurses may graduate from an approved nursing education program or a substantially equivalent one. She testified that such programs must include didactic and clinical instruction in geriatrics, obstetrics, pediatrics, psychiatric/mental health, and medical/surgical, including around 500 hours of in-person clinical instruction. Respondent confirmed that her program did not include pediatric or maternity patients, or in-person clinicals. Dr. Sportsman stressed that working with real people, in real situations, is important for nurses to develop clinical judgment, to safely provide care; and she found Respondent's lack of clinical experience with real patients troubling.

Dr. Sportsman said a nurse with inferior training results in a serious risk of harm or injury to patient or public safety; and that Respondent's lack of requisite nursing education especially presents such a risk, since Respondent works in a long-term living facility, where the assessment skills learned in clinicals are critical. Respondent testified that her RN license allows her to work with patients without direct supervision, and that she is the only RN working on her floor, with an LVN reporting to her. She agreed that an unqualified RN can cause a serious risk of harm to a patient.

The ALJ finds that Respondent's RN practice without the requisite education may endanger a client's life, health, or safety. Respondent's conduct that may endanger a client's life, health, or safety, and her representations on her Application amounting to the provision of false/misleading information in connection with the practice of nursing, constitute *de jure* unprofessional conduct likely to deceive,

defraud, or injure clients or the public under 22 TAC section 217.12(4) and (6)(H). Therefore, the ALJ finds Respondent's license renewal denial or discipline is authorized under Act section 301.452(b)(10).

D. RECOMMENDATION

Respondent was not shown to have engaged in fraud, deceit, or intentional misrepresentation, and Staff's requested disciplinary action is not warranted on that basis. However, Respondent's nursing practice without the proper qualifications must be addressed.

The Board is charged with regulating the practice of nursing in Texas with the aim of ensuring public safety. Respondent's course was not approved and not substantially equivalent to a Texas-approved program; so, she lacks the required foundation. The ALJ notes Dr. Sportsman's expert opinion that Respondent's lack of education presents a risk of harm to patients and public safety if she is allowed to keep the License; but also recognizes there is no evidence Respondent has had any disciplinary issues or write-ups in her RN work since her licensure over three years ago.

Respondent does not meet Board standards for licensure and for that reason the ALJ recommends that the Board revoke, and not renew, Respondent's License. While there is evidence that Respondent passed the NCLEX-PN and has been practicing nursing without issue since 2021, an RN can harm a patient if not properly trained, and the evidence does not establish that Respondent was properly trained for nursing practice. Moreover, Respondent's nursing practice is likely to deceive

the public into believing she is qualified. Importantly, Respondent cannot be certified as a graduate of any nursing program; therefore, if she carries on practicing as an RN, she will continue to violate Act section 301.451(3)(B) and continue to commit unprofessional conduct likely to deceive, defraud, or injure a patient or the public.

While the Board's disciplinary matrix provides sanction tiers and levels for violations, the situation posed by this case does not lend itself to the matrix's focus on violations of a rule or Board order under Act section 301.452(b)(1). To the extent it is necessary, the ALJ concludes that Respondent's violation of Act section 301.451(3)(B) by practicing nursing under a license issued under false representation constitutes a second tier, second level offense under Act section 301.452(b)(1), and does not rise to tier three. It does not deal with probationary restrictions through a Board order; however, the violation is not a mere procedural Board rule. Sanction level two is appropriate as Respondent cannot complete the conditions to correct the violation, but instead will continue to be in violation until she is issued a lawful diploma and meets the eligibility requirements for practicing nursing.

As for Act section 301.452(b)(10), Respondent's violation (through her unprofessional conduct as defined in 22 TAC sections 217.12(4) and (6)(H)) constitutes a second tier, second level offense, and does not rise to tier three. Importantly, there is no evidence of harm to a patient or the public; however, Respondent's conduct does present a serious risk to patient or public safety. For these reasons, the ALJ cannot recommend that Respondent retain her License and recommends revocation and denial of renewal.

VI. FINDINGS OF FACT

1. Abidemi Afusat Amuda (Respondent) holds a vocational nurse license (LVN) from the Texas Board of Nursing (Board) from 2018 that is not in dispute. She also obtained a registered nurse (RN) license from the Florida Board of Nursing (Florida Board) on July 15, 2021.

2. Respondent completed a vocational nursing education program from Concorde Career College (Concorde), in Grand Prairie, Texas, in 2018, which was the basis of her LVN licensure.

3. From May 2020 to May or June 2021, Respondent attended a nursing program online from Dallas, Texas through Siena Education Center LLC-ADN or Siena College of Health (Siena) of Lauderhill, Florida.

4. Siena was approved by the Florida Board as an in-person Associate of Science nursing education program and was not approved for instruction online or outside of Florida.

5. Siena's approved program was to include 450 hours of in-person clinicals.

6. Through a March 2020 memo, the Florida Commission on Independent Education (FCIE) permitted nursing schools to teach online instead of entirely in-person due to COVID, if they responded immediately informing the FCIE of their plans and other details. Clinicals were still required to be in-person. Siena did not respond and was not approved for online instruction.

7. Respondent attended all her classes and clinicals online except for three days in person in Florida that did not amount to 450 hours in-person, and that did not include pediatric or maternity patients.

8. On July 14, 2021, Respondent took and passed the NCLEX-RN exam (for RNs).

9. On July 17, 2021, Respondent submitted to the Board an application (Application) for an RN license by endorsement based on her Florida RN license; and she was issued RN License No. 1051644 (License).

10. Where the Application requested her "Initial Registered/Professional Nursing Education," Respondent listed her practical nursing program at Concorde. Elsewhere in the Application, she listed her state of licensure for endorsement as Florida.

11. The Board's licensure portal, which it relies upon in considering licensure applications, shows Respondent was registered first in Florida and indicated to the Florida Board that she graduated from Siena.

12. Respondent's transcript accessed by the Board names Siena, in Florida, as her school for her Associate of Science and lists her program dates as February 2019 to June 2020, which is in error. Respondent was unable to get a corrected transcript before the school closed down, despite her attempts to contact Siena's school administrator.

13. Respondent believed Siena was a legitimate nursing education program and Florida-approved school.

14. Respondent confirmed with the Florida Board that Siena was approved, and she believed Siena was authorized to provide online classes due to COVID.

15. By teaching online, failing to meet the required 450 hours of in-person clinicals, and not including pediatric or maternity patients, the Siena program completed by Respondent did not meet the outline for the program that was approved by the Florida Board and was not substantially equivalent to Texas programs' requirements.

16. Respondent never worked in Florida.

17. Respondent's November 2, 2022 License renewal application (Renewal) attested that she attended Siena.

18. Respondent did not fraudulently or deceitfully misrepresent her nursing education.

19. Respondent's provision of misleading answers in her Application, even though unintended, affected the Board's decision to license her and was connected to her practice of nursing.

20. Respondent's License was issued under false representation.

21. Respondent has worked in Dallas, Texas under her License since she received it.

22. Respondent's registered nursing program was not approved in Florida or Texas.

23. A registered nurse who is not properly trained can harm a patient.

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

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

26. Respondent has been working as a Texas RN for approximately three years and has never received any complaints at work or from the Board or Florida Board.

27. Upon receiving notice that some Texas nurses, including Respondent, may be implicated in a federal investigation involving illegitimate or fraudulent diplomas, the staff (Staff) of the Board initiated a disciplinary action against Respondent and sought to revoke her License.

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

29. On March 7, 2023, Staff sent Respondent its Formal Charges. On March 15, 2024, Staff sent Respondent its First Amended Notice of Hearing and First Amended Formal Charges.

30. On May 20, 2024, Staff sent Respondent an amended Notice of Hearing (NOH).

31. Together, the NOH 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.

32. On September 24, 2024, SOAH Administrative Law Judge Heather D. Hunziker convened a hearing on the merits via Zoom videoconference. Assistant Attorneys General Austin Havens and Katherine Johnson represented Staff. Attorney Marc M. Meyer represented Respondent, who appeared. The record closed on October 4, 2024, with the filing of briefing.

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 and denial of License renewal were warranted, including identifying the legal bases to show that Respondent's nursing program did not qualify her for licensure; 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. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).

6. Staff did not meet its burden of proof to show that Respondent fraudulently obtained a nursing diploma, license, or record in violation of Texas Occupations Code section 301.451(1).

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 license or record that was signed or issued under false misrepresentation, in violation of Texas Occupations Code section 301.451(3)(B).

10. Respondent is subject to discipline or denial of License renewal for violating chapter 301 of the Texas Occupations Code. Tex. Occ. Code § 301.452(b)(1).

11. Respondent did not successfully complete an approved program of registered nursing. Tex. Occ. Code § 301.157(d).

12. Because Respondent's nursing program was not approved and because she did not work in Florida, she was not qualified for licensure by endorsement. 22 Tex. Admin. Code § 217.5(a)(1).

13. Respondent did not show that her nursing education was substantially equivalent to a Texas-approved nursing program. *See* Tex. Occ. Code §§ 301.157(d), .252(a)(2), .260(a)(2); 22 Tex. Admin. Code § 215.9(e); *see also* 22 Tex. Admin. § 217.2(a)(4)(A).

14. Because Respondent's nursing program was not substantially equivalent education to a Texas-approved nursing program, she does not qualify for licensure by examination. 22 Tex. Admin. Code § 217.2(a)(4)(A); *see also* Tex. Occ. Code § 301.157(d).

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

16. Respondent's unqualified practice of nursing constitutes unprofessional conduct likely to endanger a client's life, health, or safety. 22 Tex. Admin. Code § 217.12(4).

17. Respondent's provision of misleading answers in her nursing application constituted unprofessional conduct likely to deceive, defraud, or injure clients or the public. 22 Tex. Admin. Code § 217.12(6)(H).

18. Respondent is subject to discipline or denial of License renewal for her unprofessional conduct. Tex. Occ. Code § 301.452(b)(10).

19. The Board may take disciplinary action against Respondent or deny her License renewal. Tex. Occ. Code §§ 301.451(3)(B), .452(b)(1), (10); 22 Tex. Admin. Code § 217.12(4), (6)(H).

20. Respondent's violation of Texas Occupations Code section 301.451(3)(B) constitutes a second tier, second level offense, and does not rise to tier three. 22 Tex. Admin. Code § 213.33(b), (c).

21. Respondent's two types of unprofessional conduct under Texas Occupations Code section 301.452(b)(10) constitute second tier, second level offenses, and do not rise to tier three. 22 Tex. Admin. Code § 213.33(b), (c).

VIII. RECOMMENDATION

The Board should revoke, and deny renewal of, Respondent's License.

Signed November 22, 2024.

Heather D. Hunziker

Presiding Administrative Law Judge

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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 9, 2024

Austin Havens, TX OAG Staff Attorney **VIA EFILE TEXAS**

Marc M. Meyer, Respondent's Attorney **VIA REGULAR MAIL**

RE: Docket Number 507-24-05489.TBN; *Texas Board of Nursing v. Abidemi Afusat Amuda*

Dear Parties:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced hearing has expired and neither party filed exceptions. Therefore, the Administrative Law Judge recommends that the PFD be adopted as written. Because the State Office of Administrative Hearings has concluded its involvement in the matter, the case is being returned to the **Texas Board of Nursing**.

CC: Service List

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Filing Description: NO EXCEPTIONS LETTER BY ALJ
Status as of 12/9/2024 2:15 PM CST

Associated Case Party: AbidemiAfusatAmuda

Name	BarNumber	Email	TimestampSubmitted	Status
Marc Meyer		marc@marcmeyerlawfirm.com	12/9/2024 1:41:30 PM	SENT
Nancy RoperWillson		nwillson@roperwillson.com	12/9/2024 1:41:30 PM	SENT
Sandra Thornton		sandra@marcmeyerlawfirm.com	12/9/2024 1:41:30 PM	SENT

Associated Case Party: Texas Board of Nursing

Name	BarNumber	Email	TimestampSubmitted	Status
Paul Pruneda		paul.pruneda@oag.texas.gov	12/9/2024 1:41:30 PM	SENT
Austin Havens		Austin.Havens@oag.texas.gov	12/9/2024 1:41:30 PM	SENT