DOCKET NUMBER 507-24-05518

IN THE MATTER OF	§	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	§	
NUMBER LVN 1013918,	§	**OF**
ISSUED TO	§	
ELIZABETH KEFUE FAABE	§	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: MARC M. MEYER
2300 WOODFOREST BLVD N. SUITE 600
MONTGOMERY, TEXAS 77316

BRENT MCCABE
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

At the regularly scheduled public meeting on July 18, 2024, 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 amended Conclusion of Law 10.

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 or didactic 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, was not approved by the Texas Board of Nursing.[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] Respondent admitted to practicing nursing under the unlawfully issued diploma.[7] The Board agrees with the ALJ's observation that 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).[8]

For these reasons, as well as all other articulated reasons within the Proposal for Decision, the Board agrees with the ALJ's recommended sanction of revocation.

IT IS, THEREFORE, ORDERED THAT Licensed Vocational Nurse License Number 1013918, previously issued to ELIZABETH KEFUE FAABE, 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 18th day of July, 2024.

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. 507-24-05518 (April 26, 2024), Exceptions Letter issued June 7, 2024.

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[1] Finding of Fact 26.
[2] Conclusions of Law 8-10.
[3] PFD at 25. Finding of Fact 24.
[4] Id.
[5] PFD at 23-24; Findings of Fact 22-25.
[6] Tex. Occ. Code § 301.451(3)(B).
[7] PFD at 24.
[8] PFD at 25.

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 26, 2024

Kathy Johnson
Office of the Attorney General

VIA EFILE TEXAS

Marc Meyer
Law Office of Marc Meyer, PLLC

VIA EFILE TEXAS

RE: SOAH Docket No. 507-24-05518; TBN No. CX2890852746; *Texas Board of Nursing v. Elizabeth Kefue Faabe*

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. 507-24-05518 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
ELIZABETH KEFUE FAABE,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke Elizbeth Kefue Faabe's licensed vocational nurse (LVN) license (No. 1013918) on the basis that Ms. Faabe used a fraudulent or unlawful license or diploma and lacks the requisite education or degree. The Administrative Law Judge (ALJ) finds Staff failed to demonstrate fraud on Ms. Faabe's part but recommends the Board revoke the license because Ms. Faabe practiced nursing under an unlawful diploma and does not meet the requirements to practice nursing.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

State Office of Administrative Hearings (SOAH) ALJ Brent McCabe convened a hearing on the merits on February 26, 2024. Assistant Attorney General Kathy Johnson represented Staff, and attorney Marc Meyer represented Ms. Faabe. The record closed on the same day with the filing of the admitted exhibits.

There are no contested issues of jurisdiction in this proceeding; therefore, that matter is addressed solely in the Findings of Fact and Conclusions of Law. During closing argument, Ms. Faabe raised one issue of notice: She was not properly notified of Staff's allegations under 22 Texas Administrative Code section 217.5 because the first amended notice of hearing cites to the provision as "22 Texas Administrative Code section [] 217.5(B), (C)," rather than to 217.5(a)(1)(B), (C). The ALJ disagrees. While the citation is incomplete to the particular subsection, the statement of factual matters and the reference to particular sections gave fair notice to Ms. Faabe of the Staff's allegations and the sections of statutes or rules on which Staff intended to rely. Also, there is no indication in the record that the typographical error resulted in unfair surprise or prejudice to Ms. Faabe. The ALJ concludes that Ms. Faabe received proper notice of the allegations against her, and the applicable law relied upon by Staff.

II. BACKGROUND

This case is the result of a law enforcement action against a fraudulent nursing diploma scheme, called "Operation Nightingale" by the Federal Bureau of

Investigation and federal Health and Human Services Commission-Office of Inspector General.[1]

Ms. Faabe was identified as a nurse who received a degree from Sacred Heart International Institute, Inc. (Sacred Heart)—one of the schools implicated in the investigation. As a result, Staff brought formal charges against Ms. Faabe and seek the revocation of her LVN license on the grounds that: (1) Ms. Faabe participated in the fraudulent scheme at the center of Operation Nightingale and obtained her license through fraudulent means; (2) Ms. Faabe was prohibited from practicing nursing because her license and diploma were obtained or issued unlawfully; and (3) Ms. Faabe cannot be certified as a graduate of a nursing program because she did not graduate from an approved school and did not receive education substantially equivalent to a Texas nursing education. Staff asserts that these grounds give rise to disciplinary action and constitute a grave risk to public safety.

Ms. Faabe responds that (1) discipline is not appropriate because she was not involved in the scheme, did nothing wrong, and believed her degree was valid; (2) this is a licensing decision, and the Board should accept its decision when it accepted her credentials and issued a license; and (3) Ms. Faabe's experience demonstrates her proficiency as an LVN.

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[1] Proposal for Decision, *Tex. Bd. of Nursing v. Omietimi*, SOAH Dkt. No. 507-23-18180 (St. Off. Of Admin. Hrgs., Nov. 20, 2023) (Shenoy, J.). That Proposal for Decision (PFD) offers a full discussion on "Operation Nightingale" and its scope, which is not reproduced here.

III. APPLICABLE LAW

The Board is responsible for the regulation of nurses pursuant to the Texas Nursing Practice Act (Act).[2] 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.[3]

A. LICENSING REQUIREMENTS

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 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."[4] By rule, the Board has specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program."[5]

An approved nursing education program means a program (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

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

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

[4] Tex. Occ. Code § 301.260(a)(2).

[5] 22 Tex. Admin. Code § 217.5(a)(1). For purposes of this PFD, citations to licensing requirements will be to the rule in effect at the time Ms. Faabe's initial licensing in September 2020. *See* Tex. Occ. Code § 301.260(a). In October 2022, section 217.5(a)(1) was amended to include either "an approved Texas nursing education program" or a "program with substantially equivalent education standards[.]" *See* 47 Tex. Reg. 6581 (Oct. 7, 2022) (adopting the rule as produced in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)).

of another state and the Board.[6] 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 or the Texas Higher Education Coordinating Board, as applicable, and the program's proposal must be approved by the Board.[7] If the governing entity of a program has vocational nursing programs in other jurisdictions (for example, a Florida-approved school seeks to operate a nursing program in Texas), the Texas-based program must still be approved by the Board.[8]

An LVN program in another state may be deemed to have "substantially equivalent education standards" to a Texas program if:

(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.[9]

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[6] Tex. Occ. Code § 301.157(d).

[7] 22 Tex. Admin. Code § 214.3(a)(1), (a)(2)(B).

[8] *See* 22 Tex. Admin. Code § 214.3(a)(1), (a)(2)(B) (requiring governing entities with programs in other jurisdiction to include additional information with their program proposal).

[9] 22 Tex. Admin. Code § 217.2(a)(4)(B). As of 2022, these requirements were moved to 22 Texas Administrative Code section 217.5(a)(1)(B). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022).

B. DISCIPLINE

Pursuant to the Act, a nurse is subject to disciplinary action for:

- A violation of the Act, a Board rule or regulation, or a Board order or
- Using a nursing license, diploma, or permit, or the transcript of such a document that has been fraudulently purchased, issued, counterfeited, or materially altered.[10]

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.[11] 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.[12] The Board's schedule of disciplinary sanctions is a disciplinary matrix.[13] 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.[14]

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

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

[12] Tex. Occ. Code § 301.4531(b).

[13] 22 Tex. Admin. Code § 213.33.

[14] 22 Tex. Admin. Code § 213.33(b).

The standard of proof is a preponderance of the evidence.[15] Staff has the burden of proving its allegations by a preponderance of the evidence, and Ms. Faabe has the burden of proving mitigating factors, if any.[16]

IV. EVIDENCE

Staff offered nine exhibits, of which eight were admitted.[17] Ms. Faabe did not offer any exhibits. The following witnesses provided testimony:

Jason Bowmen	An educational policy analyst at the Florida Commission on Independent Education. Mr. Bowmen testified about Florida's accreditation statutes and rules and the accreditation of Sacred Heart International.
Anthony Diggs	Director of enforcement at the Board. Mr. Diggs testified as to the Board's response to the Nightingale investigation.
Elizabeth Faabe	Respondent and an LVN licensed in 2020, following a diploma issued by Sacred Heart International, a school that is subject to the federal investigation under the title "Operation Nightingale"
Mbeng Know	A colleague of Ms. Faabe, testifying about his experiences with Ms. Faabe's work as an LVN.
Virginia Ayars	Nursing education expert with the Board. Dr. Ayars testified about nursing program qualifications in Texas and opinions on Ms. Faabe's education.

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

[16] 1 Tex. Admin. Code § 155.427.

[17] Staff Ex. 1-5, 7-9.

A. SUMMARY AND DOCUMENTARY EVIDENCE

Ms. Faabe was licensed as a LVN in September 21, 2020.[18] In her application, Ms. Faabe indicated that she graduated from Sacred Heart International in Deerfield Beach, Florida; she passed the NCLEX-PN[19] exam in September 2020, and she was licensed as practical nurse[20] in Florida.[21] At the time of Ms. Faabe's attendance, Sacred Heart was approved by the Florida Board of Nursing for in-person nursing education program, but was not approved for online instruction or online clinical instruction.[22] According to Sacred Heart's program outline, its nursing program was approved for a 12-month "campus" program in which a student would complete 1,350 hours of training with 675 hours being theory hours, 20 hours being lab hours, and 655 hours being externship hours.[23] The owner and operator of Sacred Heart prepared an affidavit in which he admitted that he issued transcripts and diplomas to individuals who did not receive instruction from Sacred Heart and did not receive the clinical training required to obtain a practical nursing transcript and diploma.[24] In his affidavit, he sought to list those individuals who received appropriate

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[18] Staff Ex. 1 at 0002.

[19] The NCLEX-PN is the nationwide standardized test for vocational nurses administered by the National Council of State Boards of Nursing.

[20] A practical nurse in Florida is the equivalent of a vocational nurse in Texas. For ease of reading, this PFD will use the term vocational nurse in place of practical nurse.

[21] Staff Ex. 2 at 0016-17.

[22] Staff Ex. 3 at 0025. Sacred Heart voluntarily closed in June 2021. Staff Ex. 3 at 0025.

[23] Staff Ex. 8 at 0224.

[24] Staff Ex. 5 at 0083.

instruction and those who, according to him, did not.[25] Ms. Faabe's name appears in one of the lists.[26]

B. TESTIMONY OF MR. DIGGS

Mr. Diggs is the director of enforcement with the Board of Nursing. His testimony largely reflected the documentary evidence of Board's knowledge of Operation Nightingale and the investigations it undertook after being made aware of the federal investigation in 2022. He testified that the Board's mission is to protect the public health by regulating educational requirements. He stated he was unaware of any instance—outside of the cases related to Operation Nightingale—where the Board sought to revoke a nurse's license because the nursing program from which they graduated had its approval revoked, but he finds this situation to be unique and not encountered by the Board before. He acknowledged that the Board has received no complaints against Ms. Faabe during her nursing practice.

C. TESTIMONY OF MR. BOWMEN

Mr. Bowmen is an employee for the Florida Commission on Independent Education (FCIE), the agency responsible for granting licenses for nursing programs in conjunction with approval from the Florida Board of Nursing. He testified that all post-secondary schools must be licensed and are subject to Florida's statutes and rules. Each nursing program in Florida must submit a program outline, detailing the

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[25] Staff Ex. 5 at 0083.

[26] Staff Ex. 5 at 0091. Exhibits 5's redactions eliminate any express reference to which list Ms. Faabe's name appears on but, by inference, it appears that her name is listed on Attachment B—the list that Mr. Etienne concluded received illegitimate diplomas.

number of hours for the program including a breakdown of clinical and classroom/theory hours. For the vocational nursing program, Florida requires a minimum hourly requirement of 1,350 hours, of which 50 percent are to be clinical hours. Clinical hours include both lab and externship hours. Mr. Bowmen testified that Sacred Heart's program outline represented a typical program outline. He testified that in 2019 through March 2020—the timeframe in which Ms. Faabe says she attended—Sacred Heart was not approved for remote learning, as the program outline only authorized campus or in person.[27] Once a program is licensed and approved, any modification to the program outline requires an update to FCIE and is subject to its review. In Sacred Heart's case, it never sought modification of its program outline.

D. TESTIMONY OF MS. FAABE

For five years, Ms. Faabe was a certified nursing assistant. In 2019, she decided to attend a vocational nursing program at Burnett International College (Burnett) after a friend told her about it and gave her a brochure.[28] After that, she went online and found out that the school was in Florida.[29] However, she understood classes were being held in Texas. She did not check to see if Burnett was approved by the Board. When she contacted the school, they told her that they have a campus in Houston and provided the details of the classes including the cost, length, and expectations. After discussing with her husband, she filled out an application and

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[27] Staff Ex. 8 at 0224. Mr. Bowmen also testified that in April 2020—the month that Ms. Faabe says she graduated from Sacred Heart—the FCIE took corrective action with Sacred Heart because of subpar placement rates.

[28] Staff Ex. 7 at 10.

[29] Staff Ex. 7 at 10.

took an English language, algebra, and general knowledge exam.[30] The next week, she found out she passed the examination and then could come in for an interview with Serge Jean—who would later be the main instructor for the program—and write an essay.[31] She was told that they required between 850 and 1,000 hours to graduate.[32]

In March 2019, she began the program at Burnett. During her time there, she was transferred to Sacred Heart. She testified that she did not request a transfer, but it was done for her through her instructors and administrators. At the time of the transfer, the owner of Sacred Heart—Charles Etienne—visited the students, gave an orientation of the school, and discussed Sacred Heart's expectations of the students.[33] She was astonished by the news of the transfer, but her fears about it were allayed by her conversations with Mr. Etienne.[34] The majority of instructors remained the same, but the students moved to a different location to attend Sacred Heart.[35] Ms. Faabe felt that she was at Sacred Heart for approximately half of the program.[36] All class credits transferred, but clinicals had to be rearranged.[37] During admission into Burnett, she was told that she would need 100 to 150 hours or more

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[30] Staff Ex. 7 at 12.

[31] Staff Ex. 7 at 13.

[32] Staff Ex. 7 at 81.

[33] Staff Ex. 7 at 17.

[34] Staff Ex. 7 at 19.

[35] Staff Ex. 7 at 20-21.

[36] Staff Ex. 7 at 22-23.

[37] Staff Ex. 7 at 23-24.

of clinicals. Sacred Heart told her that they could do 80 hours or more of clinicals.[38] To her, 80 hours of clinicals did not seem low, and she was not aware of anyone else having to take more than 80 hours. For both Burnett and Sacred Heart, she attended school in Houston and performed her clinical hours in Houston. She did not attend any classes or clinicals in Florida.[39] She graduated from Sacred Heart in April 2020.

As for payment, she testified that Burnett and Sacred Heart offered flexible payment plans. When she began, she paid an initial $5,000 through a cashier's check. After which, she paid $1,000 per month throughout the duration of the program. She paid this either in cash or through Zelle to the same number each month, save for one month that the school directed her to pay to another number.

After graduation, she passed the NCLEX-PN exam on September 1, 2020, on her first attempt. She took the NCLEX-PN in Texas. After which, she was licensed in Florida, and then the next day, she sought a LVN license by endorsement in Texas.[40] She testified that during her time at Sacred Heart and through graduation, her plan was to work in Florida, but she remained in Texas for family reasons. In her application to the Board, she indicated that she graduated from Sacred Heart in Deerfield, Florida. She felt that this was the correct option since it was a drop-down menu with no other options for other locations. She did not feel like she should inform anyone that there was not a Sacred Heart in Texas option.[41]

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[38] Staff Ex. 7 at 24.

[39] Staff Ex. 7 at 24-25.

[40] *See* Staff Ex. 2 at 0022.

[41] Staff Ex. 7 at 28-29.

As for her education at Sacred Heart, she testified that her classes took place three days a week for eight hours a day.[42] Most days they would cover two subjects.[43] Serge Jean was her main instructor who taught approximately 80 percent of her classes. He taught at both Burnett and Sacred Heart. She felt that he was qualified to teach all these courses given what he had relayed to the class about his credentials and experience.[44] Other staff included Mr. Livingston, who taught maternity[45] and respiratory, and a man that the students called Pastor, who proctored the examinations.[46] Both Livingston and Pastor were at Burnett and Sacred Heart.[47] Also, Ms. Mitchell acted as the clinical coordinator while Ms. Faabe was as Burnett.[48] Ludine Jean was the school administrator for both Burnett and Sacred Heart.[49]

While there was a curriculum, the topics were not taught on a set day and lasted the entire year, meaning there was not a set start or end day for a particular class topic. Ms. Faabe describes it as a continuous education that was done for all the

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[42] She testified that this was the schedule for the year except for one week off for Christmas break and the two clinical weeks.

[43] Staff Ex. 7 at 72.

[44] Staff Ex. 7 at 30.

[45] She noted that sometimes Mr. Jean would teach maternity, but Mr. Livingston taught it for most classes.

[46] Staff Ex. 7 at 31.

[47] Staff Ex. 7 at 32.

[48] Staff Ex. 7 at 33.

[49] Staff Ex. 7 at 43.

courses.[50] Each class had at least one required textbook, which Ms. Faabe purchased. A typical day in class would be a short review of what was learned previously and maybe a short quiz, which, depending on the grade, may require a student to repeat a portion of that class.[51] After instruction was completed and the teacher left, the students would complete evaluations and quiz each other in study groups at the recommendation of Mr. Jean.[52] On alternating days, the students would go to the lab and spend two to three hours in the skills lab.[53] In the lab, one instructor, Michelle, would demonstrate a skill and then the student would try to do it.[54] The skills lab had three mannequins, one patient bed, and materials such as gowns, gloves, and privacy curtains. Four to five students would attend the skills lab per session. While one group was in the lab, the other group would be doing group study.[55] With the mannequins, they would monitor IVs.[56] The lab would also have a medicine cart available to train medicine administration and a medicine dispensing system to interact with, similar to a Pyxis system. In the skills lab, the students were required to practice skills like medicine administration, dental care, perineal care, customer relations, private care, and wound care.[57] Ms. Faabe testified that the lab instructor

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[50] Staff Ex. 7 at 54. This was true for courses in anatomy and physiology, pharmacology, fundamentals of nursing, pediatrics, medical surgical, oncology, maternity, mental health, geriatrics, and nutrition. Staff Ex. 7 at 53-57.

[51] Staff Ex. 7 at 70.

[52] Staff Ex. 7 at 70-71.

[53] Staff Ex. 7 at 73.

[54] Staff Ex. 7 at 73-74.

[55] Staff Ex. 7 at 75.

[56] Staff Ex. 7 at 76.

[57] Staff Ex. 7 at 76.

had to review and check off all the skills before they would be able to perform the skill during their onsite clinical hours.[58]

As for these onsite clinical hours, Ms. Faabe performed 80 hours[59] at Brookshire Rehabilitation Center (Brookshire), a facility providing nursing care and rehabilitation services. During these clinical hours, she was assigned a nurse whom she would shadow as the nurse treated patients. This shadowing included watching her perform a task and then performing the skill herself.[60] She testified that there were two to three students for each nurse being shadowed and each student would do what the nurse was going to do. In the later parts of the clinicals, the students and nurses would be one on one where the student must provide direct care under the supervision of the nurse.[61] Both the Brookshire clinical supervisor and the supervising nurse would provide feedback to Ms. Faabe and the other students.[62] During the clinicals, she had certain skills she had to check off including "trach care,"[63] IV monitoring, medicine administration, wound care, vital signs, blood sugar monitoring, care for dentures, patient care, and other skills.[64] She did all the skills under direct supervision. During this time, she felt that clinicals were

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[58] Staff Ex. 7 at 76.

[59] This was divided into two 40-hour weeks in October 14-18, 2019, and January 14-18, 2020.

[60] Staff Ex. 7 at 40-41.

[61] Staff Ex. 7 at 50.

[62] Staff Ex. 7 at 41.

[63] While not explained in the testimony, this seems to have do to with care relating to the trachea. Staff Ex. 7 at 45 ("Are you saying 'trach care,' like a tracheotomy?" "Yes").

[64] Staff Ex. 7 at 42.

connected to all her classes and the general course of nursing process. She did not care for any live pregnant women or children during her clinicals. However, she testified that Brookshire had a room in which there was a mannequin where they would test skills on the mannequin for both maternity and pediatric care.[65] After clinicals, she felt comfortable with starting her nursing practice.[66]

Since her licensure in Texas, Ms. Faabe has worked at two nursing and rehabilitation facilities, Vibralife and West Houston Rehabilitation Center. Ms. Faabe testified that her jobs do not require her to care for children or provide maternity care. Since becoming an LVN, she has received no disciplinary action by the Board and had only received one verbal warning from her work.[67] Ms. Faabe acknowledged that an LVN can harm a patient if they are not properly trained.

E. TESTIMONY OF MR. KNOW

Mr. Know has been licensed as a nurse since 2012. He is not a certified nurse instructor and has no experience in training nurses. Previously, he worked at Vibralife alongside Ms. Faabe. He testified that Ms. Faabe was an exceptional nurse from what he saw. He never witnessed any deficiencies in knowledge or skills.

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[65] Staff Ex. 7 at 46-48.

[66] Staff Ex. 7 at 49.

[67] The warning was following an incident where a patient's family was angered because the patient's medication would not be filled the night that the patient was admitted to facility since it was after pharmacy hours. Ms. Faabe angrily reprimanded the patient's family after they said something about the staff being a "bunch of black fools." The patient's family then checked out the patient and moved him to a new facility. Ms. Faabe's supervisor told her that she should have managed the situation better to retain the patient at the facility.

As for his own LVN education, he testified that he attended clinicals but could not remember how many. He did recall a clinical rotation in pediatrics and maternal care where he worked with live patients.

F. TESTIMONY OF DR. AYARS

Dr. Ayars is a nursing consultant at the Board, with focus and expertise in nurse education and teaching.[68]

She testified that each nursing program requires approval by the Board before it can be licensed to provide instruction. She described this approval process as thorough, typically requiring eight to 12 months from proposal to approval. Nursing programs approved in other states but seeking to establish a program in Texas must go through this same process. She testified that there are currently 218 nursing programs approved in Texas, and the Board works with them to ensure that they meet appropriate standards. However, a nursing program may lose its Board approval if certain standards are not maintained, such as an 80 percent first-time passage rate on the NCLEX by its students. Dr. Ayars did not equate a loss of a program's approval as evidence of substandard education for any particular nurse at that program because it would depend on the time of graduation.

As for a program's educational requirements, Dr. Ayars testified that the Board requires substantial clinical hours for its vocational nursing programs—approximately 550 hours. These clinical hours are progressive in nature and

[68] Dr. Ayars has a doctorate in education, has been licensed as registered nurse for over 50 years, and is a certified nurse educator.

correspond with the didactic lessons in classroom hours. Level one of the clinical hours represent interview and noninvasive skills such as recording family history, height, weight, and vitals; bathing; lifting; ambulating; and use of a wheelchair. Level two works on intermediate skills, and level three addresses advanced skill such as monitoring IVs, foley catheters, and feeding tubes. Within these levels, Dr. Ayars described a progression from the skills lab—where a student needs to practice a skill and demonstrate mastery—to a setting with live patients. She described the importance of mastering the correct technique for these skills using an example of a common mistake—contaminating a sterile field introducing a risk of infection. Therefore, clinical mastery is important for the safety of both patients and students. She also acknowledged that it is not possible to see all potential issues during the student's clinical hours. As for classroom teaching, she described that programs are expected to cover 12-13 courses that range in complexity and cover the five overarching subject areas identified in the Board rules: medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing.

As for Ms. Faabe's education at Sacred Heart, Dr. Ayars found it insufficient and felt it was not substantially equivalent to the Board's educational requirements. For one, Dr. Ayars opined that 80 clinical hours are not comparable to the hours required in a Texas program. Also, Dr. Ayars took issue with the quality of these hours, indicating that the term "shadowing" is not used because in a live clinical setting, the student should be the one demonstrating the skills under direct supervision. Also, Dr. Ayars noted that Ms. Faabe's clinical hours did not expose her to live patients in all five of the required areas of practice including maternity and pediatric. Finally, for the classroom hours, Dr. Ayars testified that she has never seen

a program in which one instructor taught 80 percent of the courses or where the individual classes did not have a definitive start/stop date.

V. ANALYSIS

A. MS. FAABE DID NOT COMMIT FRAUD

While Staff did not assert that Ms. Faabe committed fraud or deceit in procuring her LVN license,[69] it does allege that Ms. Faabe used a nursing license or diploma that has been fraudulently purchased or issued and that Ms. Faabe practiced nursing under a diploma or license that was obtained fraudulently.[70] The fraudulent act alleged by Staff appears to be her representation that she graduated from Sacred Heart in Deerfield Park, Florida and relied upon on representation to obtain her license. However, neither the Act nor Board rules appear to provide a definition for 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.[71] In this case, the evidence does not establish that when Ms. Faabe made the representation that she was a graduate of Sacred Heart to obtain her license that she knew that the representations were false or made recklessly.

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[69] Tex. Occ. Code § 301.452(b)(2).

[70] Tex. Occ. Code §§ 301.451(3)(A), .452(b)(5).

[71] *Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998); *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).

Ms. Faabe testified that she believed she graduated from Sacred Heart and felt that she was prepared to enter the nursing practice. The circumstantial evidence supports this belief. Ms. Faabe received a diploma and a transcript from Sacred Heart. In choosing the school, Ms. Faabe testified that she received a brochure in early 2019 and found out that Burnett—her first program—was licensed in Florida. Mr. Bowmen testified that during this period Sacred Heart was licensed by FCIE and approved by FBON. In applying to Burnett, Ms. Faabe testified that she had to complete an application, an exam, and an interview before she was accepted. While she testified that the transfer from Burnett to Sacred Heart caused some concern, Sacred Heart's owner allayed these fears when he visited the school and answered their questions. The school had a physical location with classes meeting three times a week for a year and clinical rotations at a working facility. While Dr. Ayars takes issue with the quality of Sacred Heart's education, it is not established that a person without experience in nursing education would question that this licensed program was not providing the education that it was approved for and advertising.

Indeed, it is possible that a person would have questioned Sacred Heart's program given its operation in Texas with Florida-based approval, its use of Zelle to pay tuition, its low number of faculty, and the forced transfer of students from Burnett to Sacred Heart. However, the fact that Ms. Faabe did not question the school or was ignorant about certain requirements the Board places on nursing programs does not rise to the level of fraud.[72]

[72] In fact, Dr. Ayars describes the nursing profession as one of the most trustworthy, and the Board relies on applicants providing accurate information. Yet, Staff argues that reliance and trust on the representations by nursing educators should be held against Ms. Faabe.

Because her LVN license was not obtained fraudulently, Staff did not demonstrate that its use was a violation under Texas Occupations Code section 301.452(b)(5).

B. MS. FAABE VIOLATED ACT SECTION 301.451(3)

While fraud on behalf of Ms. Faabe was not established, Staff argues that Ms. Faabe violated Act section 301.451(3) when she practiced nursing under a diploma that was unlawfully issued by Sacred Heart. Ms. Faabe responds that section 301.451(3) should be limited to a nurse who acts unlawfully to obtain or issue a diploma or license and not on the unlawful actions of a third party. To read otherwise, according to Ms. Faabe, would result in a punitive action against an unknowing nurse for the actions of another.

Ms. Faabe's arguments are misplaced. To read section 301.451(3) as focused solely on the actions of the nurse would violate a tenet of statutory construction that each term should be given meaning so that none is rendered meaningless or mere surplusage.[73] The section prohibits a nurse from practicing under a diploma that was either (1) obtained unlawfully or fraudulently or (2) signed or issued unlawfully or under false representation. To read both subsections as focused on Ms. Faabe as the actor would essentially reduce "obtained" and "issued" to the same meaning. Additionally, it ignores the common understanding of the term "issued." It is the

[73] *See, e.g., TIC Energy and Chem., Inc. v. Martin*, 498 S.W.3d 68, 75 (Tex. 2016).

school who issues a diploma—not the nurse. Therefore, one should look to the school's actions to determine whether issuance was unlawful.

Turning to Ms. Faabe's argument that disciplining a nurse under these circumstances would be unfairly punitive for the bad acts of a third party. While the ALJ is sympathetic to the argument that a person should not be punished for the acts of others, it ignores that the Board's disciplinary statutes are not solely focused on punishment for or correction of bad acts but are also to serve the Board's duty to protect patients and the public health. The disciplinary statutes seek to define sanctionable actions under both of these perspectives—sometimes these actions are not the result of any voluntary action by the nurse. For example, the Act authorizes the Board to take disciplinary action against a nurse who has been adjudged mentally incompetent or lacks fitness because of a mental or physical health condition that could result in harm. In both cases, a nurse's incompetence or health condition may be a result of circumstances outside the nurse's acts or control, but still give rise to disciplinary action. In a similar vein, this section prohibits the practice of nursing when the nurse lacks the appropriate qualifications—an unlawful diploma or license. Therefore, the ALJ concludes that a violation under section 301.451(3) is not limited solely to a nurse's unlawful or fraudulent acts and that the prohibition on a person practicing nursing does not require that the nurse be subjectively aware that she is violating the section.

Resolving those arguments, it turns now to whether Ms. Faabe's diploma was issued unlawfully and, if so, was she practicing nursing under it.

1. Issuance of the Diploma Was Unlawful

The evidence establishes that Ms. Faabe's diploma from Sacred Heart was issued unlawfully. Ms. Faabe testified that she graduated and received a diploma from Sacred Heart. Sacred Heart, at the time, was licensed and approved for a vocational nursing program in Florida and could issue diplomas to students who completed the course of study on campus in Florida pursuant to its program outline. It was not licensed or approved for a nursing program in Texas and, therefore, had no authority to lawfully issue a diploma to Texas students.

In Ms. Faabe's instance, she attended the program in Texas and never attended courses or clinicals in Florida.[74] Even if she had, she did not successfully complete the Sacred Heart's educational requirements pursuant to its program outline—requiring 655 externship hours, whereas Ms. Faabe completed only 80 hours.[75]

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[74] Because Sacred Heart was not authorized under its Florida approval to issue a diploma to students in Texas, this PFD need not reach the question of whether its program was substantially equivalent. However, the ALJ notes that the program completed by Ms. Faabe was not substantially equivalent for, among other reasons, insufficient clinical hours and a lack of clinical hours treating live pediatric and maternity patients. 22 Tex. Admin. Code §§ 214.9(c)(3), (e); 217.2(a)(4)(B).

[75] Additionally, because Ms. Faabe did not complete the educational requirements of Sacred Heart's program outline, she cannot be certified as a graduate of that nursing program. Tex. Occ. Code § 301.157(d).

Despite its representations to Ms. Faabe, Sacred Heart had no authority to issue a diploma for a vocational nursing program, and it was issued in contravention to both Florida and Texas law.[76] Therefore, it was issued unlawfully.

2. Ms. Faabe Practiced Nursing Under the Unlawful Diploma

A person may not practice nursing under a diploma that was signed or issued unlawfully.[77] As noted above, the diploma Ms. Faabe relied on to receive her license and under which she practiced since September 2020 was unlawful. Since that time, Ms. Faabe has practiced vocational nursing, working multiple positions in nursing and rehabilitation centers.

Having found that Ms. Faabe's diploma was issued unlawfully and Ms. Faabe has been practicing nursing under it, the ALJ finds that Ms. Faabe violated Act section 301.451(3)(B) and, by extension, Act section 301.452(b)(1), which authorizes disciplinary action for a violation of the Act.

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[76] In his affidavit, Charles Etienne indicated that Sacred Heart issued diplomas to individuals who did not meet the requirements. However, the ALJ finds that the affidavit is entitled to little, if any, weight. First, while the affidavit would subject Mr. Etienne to criminal and civil liability, it was provided in cooperation with the federal investigation providing motivation and incentive for him to make such statements. Also, there is little establishing his personal knowledge in the matter. Instead, his affidavit indicates that he based his statement on a review of school records, which were not presented or provided in this case against which to test his opinion as to the legitimacy of a particular degree. Finally, the redactions to Mr. Etienne's affidavit make it such that Ms. Faabe's placement on one of the lists is left to inference because there is no explicit reference to whether her name appears on Attachment A—the list proposing individuals with valid diplomas—or Attachment B—the list of individuals who in his opinion received invalid diplomas.

[77] Tex. Occ. Code § 301.451(3)(B).

C. RECOMMENDATION

The ALJ recommends that the Board revoke Ms. Faabe's license. While there is evidence that Ms. Faabe passed the NCLEX-PN on her first attempt and has been practicing nursing without issue since 2020, and that her colleagues find her to be an exceptional nurse, Dr. Ayars and Ms. Faabe both acknowledge that a vocational nurse can harm a patient if not properly trained, and the evidence establishes that Ms. Faabe was not properly trained to receive adequate clinical or didactic education in the required subject matter for a LVN nursing practice. Importantly, Ms. Faabe cannot be certified as a graduate of any nursing program and if she continues practicing as an LVN, she will continue to violate section 301.451(3)(B).[78] For these reasons, the ALJ cannot recommend that Ms. Faabe retain her license and recommends revocation.

VI. FINDINGS OF FACT

1. In September 2020, Elizabeth Kefue Faabe (Ms. Faabe) was issued licensed vocational nurse (LVN) License No. 1013918 by the Texas Board of Nursing (Board).

2. From March 2019 to April 2020, Ms. Faabe attended a nursing program in Houston, Texas that purported to originally be Burnett International College

[78] While the Board's disciplinary matrix provides sanction tiers and levels for a violation under Act section 301.452(b)(1), the matrix largely focuses on violations of a rule or Board order. The situation posed by this case does not lend itself to such an analysis. However, to the extent it is necessary, the ALJ concludes that Ms. Faabe's violation of section 301.452(b)(1) (through her violation of section 301.451(3)) constitutes a second tier, second level offense. The violation does not rise to a tier three, as it does not deal with probationary restrictions through a Board order. However, the violation is not a mere procedural Board rule. Finally, sanction level two is appropriate, as Ms. Faabe cannot complete the conditions to correct the violation. Instead, she will continue to be in violation until she is issued a lawful diploma and meets the eligibility requirements for practicing nursing.

(Burnett) but later transferred to Sacred Heart International Institute, Inc. (Sacred Heart).

3. Sacred Heart was a nursing program located in Deerfield Beach, Florida, and was approved by the Florida Board of Nursing (FBON) in 2013, as an in-person practical nursing education program. It was not approved for online instruction.

4. A practical nursing license is the Florida equivalent to Texas's vocational nursing license.

5. While working as a certified nursing assistant, Ms. Faabe heard from a friend about Burnett.

6. She applied for and was accepted at Burnett in March 2019.

7. During her time at Burnett, the administrator transferred the students to Sacred Heart.

8. In April 2020, Ms. Faabe graduated from Sacred Heart and received a diploma.

9. Ms. Faabe believed Burnett, and later Sacred Heart, were legitimate nursing education programs and Florida-approved schools.

10. Ms. Faabe attended in-person classes eight hours a day, three days per week, during her time at Burnett and Sacred Heart. The classes included activities in a simulation or skills lab.

11. Ms. Faabe performed 80 hours of onsite clinicals at Brookshire Rehabilitation Center (Brookshire) during a week in October 2019 and a week in January 2020.

12. Brookshire was a nursing and rehabilitation facility.

13. During her time at Brookshire, Ms. Faabe was assigned to shadow a nurse, observing the nurse perform her duties and then attempting to perform the skill under the nurse's supervision.

14. Her clinical hours did not include care of any live pediatric or maternity patients.

15. In September 2020, Ms. Faabe took and passed the NCLEX-PN (for vocational or practical nurses).

16. She then obtained her Florida practical nursing license and her Texas LVN license by endorsement.

17. Ms. Faabe did not commit fraud in the representations she made to the Board for her LVN license application.

18. Since obtaining her license, Ms. Faabe has worked as an LVN at two facilities. Both are nursing and rehabilitation facilities. She has never had any complaints against her. She has received one verbal warning from one of her jobs that did not relate to patient care.

19. Sacred Heart was not approved by the Board to offer LVN instruction as a Texas-based program.

20. Sacred Heart was not approved by the FBON to offer LVN instruction remotely or to students in Texas.

21. Ms. Faabe only attended Burnett and Sacred Heart in Texas.

22. Ms. Faabe did not complete the program of study that the FBON approved for Sacred Heart.

23. Ms. Faabe did not complete a nursing program that was substantially equivalent to the Board's education standards.

24. Ms. Faabe's education at Sacred Heart did not cover all five subject areas required by the Board for LVN nursing education to be considered substantially equivalent to a Texas-approved program (medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing).

25. Sacred Heart's issuance of a diploma to Ms. Faabe was not authorized by either the FBON or the Board. The issuance of the diploma was unlawful.

26. A licensed vocational nurse who is not properly trained can harm a patient.

27. Upon receiving notice that some Texas nurses may be implicated in an investigation involving illegitimate or fraudulent diplomas from Sacred Heart as part of Operation Nightingale, the Staff of the Board initiated a disciplinary action against Ms. Faabe and sought to revoke her license.

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

29. On February 14, 2024, Staff sent Ms. Faabe its First Amended Notice of Hearing and First Amended Formal Charges. Together, the Notice of Hearing and 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 either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

30. SOAH Administrative Law Judge Brent McCabe convened the hearing on the merits via Zoom videoconference on February 26, 2024. Assistant Attorney General Kathy Johnson represented Staff. Ms. Faabe appeared and was represented by attorney Marc Meyer. The record closed the same day, upon the filing of admitted exhibits.

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. Ms. Faabe 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 Ms. Faabe's license was warranted, and Ms. Faabe 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.).

6. Staff did not meet its burden of proof to show that Ms. Faabe used a diploma that was fraudulently obtained, purchased, issued, counterfeited, or materially altered. Tex. Occ. Code §§ 301.451(3)(A), .452(b)(5).

7. Ms. Faabe violated the Nursing Practice Act by practicing nursing under a diploma that was unlawfully issued. Tex. Occ. Code § 301.451(3)(B).

8. Ms. Faabe did not successfully complete an approved program of vocational nursing. Tex. Occ. Code § 301.157(d).

9. The Sacred Heart program in Texas was not approved by the Board, accredited by a national nursing accreditation agency the Board determined to have acceptable standards, or approved by the FBON and accepted by the Board. Tex. Occ. Code § 301.157(d).

10. Sacred Heart did not meet Board standards for LVN programs. 22 Tex. Admin. Code §§ 214.9(c)(3), (e), (g)(3), 217.2(a)(4)(B).

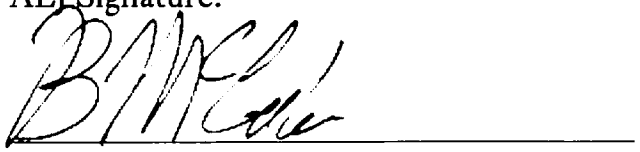
11. The Board may take disciplinary action against Ms. Faabe. Tex. Occ. Code § 301.451(3)(b), .452(b)(1).

VIII. RECOMMENDATION

The Board should revoke Ms. Faabe's LVN license.

Signed April 26, 2024

ALJ Signature:



Brent McCabe

Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

June 7, 2024

Kathy Johnson
Office of the Attorney General

VIA EFILE TEXAS

Marc Meyer
Law Office of Marc Meyer, PLLC

VIA EFILE TEXAS

RE: SOAH Docket No. 507-24-05518; TBN No. CX2890852746; *Texas Board of Nursing v. Elizabeth Kefue Faabe*

Dear Parties:

The Proposal for Decision (PFD) was issued in this case on April 26, 2024. Respondent Elizabeth Kefue Faabe timely filed exceptions to the PFD on May 10, 2024, and Staff for the Texas State Board of Nursing (Board) filed its reply on May 24, 2024. Respondent's Exceptions seek to modify or delete the PFD's Findings of Fact (FOF) Nos. 3, 25, 23; Conclusions of Law (COL) Nos. 7-11; and the recommended sanction. Having considered Respondent's Exceptions and Staff's Reply, the Administrative Law Judge (ALJ) finds that COL Law No. 10 should be amended as specified below and no other changes are warranted.

Respondent's arguments turn on similar arguments raised at the hearing on the merits and considered by the ALJ in the PFD. Respondent argues that the challenged FOFs wrongfully find that Sacred Heart unlawfully issued Respondent a diploma, because Sacred Heart, in general, was licensed and authorized to issue diplomas through the Florida Board of Nursing (FBON) and the Florida Commission for Independent Education (FCIE). Respondent rejects the contention that the Board had any role to play in Sacred Heart's authority (or lack thereof) to issue a diploma to Respondent.

Board Staff argues that the findings and conclusions in the PFD are appropriate and supported by the evidence. Specifically, Board Staff cites to the testimonies of Dr. Virginia Ayars—the Board's education expert—and Jason Bowmen, a representative from the FCIE, as support in the record for the challenged FOFs.

The ALJ agrees with Board Staff that the FOFs and COLs are appropriate and supported by the evidence. Respondent's exceptions focus mainly on Sacred Heart's authorization to grant a diploma to Florida students who completed its program authorized by the FBON and FCIE. However, that authority does not extend to Respondent. Respondent was not a Florida student and did not graduate from Sacred Heart's program in Florida; she attended the Sacred Heart program in Texas.[1] The evidence and Board rules demonstrate that a program operated in Texas requires approval by the Board even if it is a program owned by an entity with a program in another jurisdiction.[2] Therefore, it is relevant that the Board did not approve the Sacred Heart program in Texas, and it is not enough to assert that Sacred Heart, as a general proposition, could lawfully issue diplomas to students of its Florida program. In this case, Respondent attended a program in Texas under the name Sacred Heart, which (1) was not approved by the Board, (2) was not authorized by FBON or FCIE,[3] and (3) did not meet the standards set by Sacred Heart's program outline on file with FBON and FCIE.[4] Because Sacred Heart had

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[1] The Sacred Heart program in Texas also failed to meet the requirements of the program outline for Sacred Heart's program in Florida as well as the educational standards for Texas programs.

[2] *See* 22 Tex. Admin. Code § 214.3(a)(1), (a)(2)(B) (requiring governing entities with programs in other jurisdiction to include additional information with their program proposal).

[3] This is assuming that the Florida agencies could authorize a program to operate remotely in another jurisdiction. The evidence establishes that Sacred Heart was only authorized to operate an on-campus program in Florida.

[4] This is assuming that the program in Texas could be construed as under the umbrella of Sacred Heart's program in Florida.

no authorization to issue a diploma for Respondent as an attendee of the Sacred Heart program in Texas, its diploma to Respondent was unlawful.[5]

Having addressed the substance of Respondent's Exceptions, the ALJ finds that COL No. 10 should be amended to clarify the intended conclusion. The ALJ believes, based on the context of the PFD, it is apparent that COL No. 10 refers to Sacred Heart program in Texas and is not addressing the Sacred Heart program in Florida as represented by its program outline.[6] However, for the sake of clarity, the ALJ amends COL No. 10 from "Sacred Heart did not meet Board standards for LVN programs. 22 Tex. Admin. Code §§ 214.9(c)(3), (e), (g)(3), 217.2(a)(4)(B)" to

> 10. The Sacred Heart program in Texas did not meet and was not substantially equivalent to Board education standards for LVN programs. 22 Tex. Admin. Code §§ 214.9(c)(3), (e), (g)(3), 217.2(a)(4)(B).

With this amendment, the State Office of Administrative Hearings has concluded its involvement in the matter, and the case is returned to the Board.

ALJ Signature(s):

Brent McCabe,
Presiding Administrative Law Judge

CC: Service List

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[5] Respondent also argues that the Board already found Sacred Heart's program to be substantially equivalent to the Board's educational standards when it granted Respondent a license by endorsement. However, as found, Respondent did not complete the Sacred Heart program in Florida, which would be the program relied upon by the Board in granting the license. To the extent that it can be said that the Board recognized the Sacred Heart program in Florida, it has no application in this case when Respondent attended a program in Texas, which did not meet the standards for the Sacred Heart program in Florida.

[6] The Sacred Heart Florida program was not at issue in this matter, and the PFD does not address whether Sacred Heart as contemplated by its program outline with FCIE would be substantially equivalent to the Board's standards.