DOCKET NUMBER 507-24-05496

IN THE MATTER OF PERMANENT CERTIFICATE NUMBER RN 1016490, ISSUED TO MANDIKALA IKOTA	**§**	**BEFORE THE STATE OFFICE**
	§	**OF**
	§	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: MARC MEYER
2300 WOODFOREST PKWY N, STE 600
MONTGOMERY, TEXAS 77316

PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

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

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. The ALJ issued an Exception Letter which made no changes to the PFD.

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.

The ALJ found that Siena unlawfully issued Respondent's diploma because it was approved to offer in-person practical nursing program in Florida and required at least 50 percent of the hours to be comprised of clinical instruction.[1] Respondent's program through Siena was not an approved Texas program and was not substantially equivalent to Texas standards for RN programs.[2] Specifically, Respondent's nursing program was deficient because there were no clinical rotations with live patients and faculty supervision.[3] A RN who was not properly trained poses a risk of harm to patients.[4]

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

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 1016490, previously issued to MANDIKALA IKOTA, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

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

Entered this 30th day of January, 2025.

TEXAS BOARD OF NURSING

Kristin K. Benton DNP, RN

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

Attachments: Proposal for Decision; Docket No. 507-24-05496 (August 6, 2024), Exceptions Letter issued September 26, 2024.

[1] Finding of Fact 13-15, 18.
[2] Conclusion of Law 8.
[3] Finding of Fact 5.
[4] Finding of Fact 19.
[5] Conclusion of Law 7.
[6] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 6, 2024

Austin Havens
Office of the Attorney General

VIA EFILE TEXAS

Mandikala Ikota, c/o Marc Meyer
Law Office of Marc Meyer, PLLC

VIA EFILE TEXAS

RE: SOAH Docket No. 507-24-05496.TBN;
Texas Board of Nursing v. Mandikala Ikota

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 State Office of Administrative Hearings rule which may be found at www.soah.texas.gov.

CC: Service List

SOAH Docket No. 507-24-05496 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
MANDIKALA IKOTA,
RESPONDENT

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SOAH Docket No. 507-24-05496 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
v.
MANDIKALA IKOTA,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the registered nurse (RN) license held by Mandikala Ikota (Respondent), contending Respondent fraudulently obtained her license or diploma, practiced under an unlawfully issued diploma, and lacks the requisite education.[1] The Administrative Law Judge (ALJ) finds Respondent did not commit fraud but recommends the Board suspend or revoke the license because Respondent's diploma was issued unlawfully and she did not obtain an education substantially equivalent to Texas standards.

[1] Staff also seeks denial of license renewal, discussed further in the analysis section.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

State Office of Administrative Hearings (SOAH) ALJ Pratibha J. Shenoy convened the hearing on the merits via videoconference on June 13, 2024. Assistant Attorney General Austin Havens represented Staff. Respondent appeared with her attorney, Marc Meyer. The record closed on June 14, 2024, with the filing of admitted exhibits. There are no contested issues of jurisdiction, and that matter is addressed solely in the Findings of Fact and Conclusions of Law.

Respondent raised a notice issue during closing argument, contending she was not properly notified of Staff's allegations under 22 Texas Administrative Code section 217.5 because Staff's First Amended Formal Charges cites "22 Texas Administrative Code [section] 217.5(B), (C)," instead of 217.5(a)(1)(B), (C). Despite the incomplete citation, the statement of facts and the reference to particular sections gave fair notice of Staff's charges and the statutes or rules on which Staff intended to rely.[2] The record reflects no unfair surprise or prejudice resulting from the typographical error, and the ALJ concludes Respondent received adequate notice.

II. BACKGROUND

Respondent attended a Texas-approved program and became a licensed vocational nurse (LVN) in 2010; the validity of that license is not at issue.[3] In 2020,[4]

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[2] Tex. Gov't Code § 2001.052.

[3] References in this Proposal for Decision (PFD) to "license" or to Respondent's practice of nursing are to her RN license and RN practice, unless otherwise specified.

[4] As discussed below, the date of Respondent's graduation from Siena is disputed.

she received an associate's degree in nursing from Siena Education Center, LLC, d/b/a Siena College of Health (Siena) based in Lauderhill, Florida. After taking and passing the National Council Licensing Examination (NCLEX-RN),[5] she obtained an RN license in Florida and applied for a Texas RN license by endorsement. The Board issued a Texas RN license to Respondent in September 2020.

In January 2023, the Federal Bureau of Investigation and the federal Health and Human Services Commission-Office of Inspector General announced "Operation Nightingale," a law enforcement action against a fraudulent nursing diploma scheme. Siena was identified as a school potentially involved in issuing fraudulent diplomas. Respondent stipulated that her name appeared on a list of individuals who may have—through the alleged scheme—obtained nursing diplomas and subsequently secured licenses to practice nursing.

Staff seeks revocation of Respondent's RN license on the grounds that Respondent fraudulently obtained a diploma because she knew or should have known that Siena was not a legitimate program; her diploma was issued unlawfully, and she cannot practice nursing based on a license she obtained with that diploma; and Siena was not an approved Texas school and did not offer an education substantially equivalent to Texas standards. According to Staff, allowing Respondent to continue practicing as an RN is a grave risk to public safety.

Respondent counters that she did not commit fraud and believed Siena was a legitimate program; the Board issued a valid license to Respondent and should allow

[5] The NCLEX-PN exam is for vocational nurses and the NCLEX-RN exam is for registered nurses.

her to continue practicing while she addresses any identified areas of deficiency; and, even if her education was not equivalent to Texas standards, she has been practicing safely without any issues. Per Respondent, it is a disservice to the public to remove a safely-practicing nurse from the field.

III. APPLICABLE LAW

The Board is authorized to regulate nurses pursuant to the Texas Nursing Practice Act (Act).[6] A person may not practice nursing in Texas without a Board-issued license.[7] Staff seeks revocation based on Respondent's allegedly prohibited conduct as well as her alleged lack of qualifications for a license.

A. DISCIPLINE

A nurse is subject to disciplinary action for a violation of the Act, a Board rule or regulation, or a Board order.[8] It is a violation to commit "fraud or deceit in procuring or attempting to procure a license" or to use a license or diploma "that has been fraudulently purchased, issued, counterfeited, or materially altered."[9] It is also prohibited for a person to practice nursing under a diploma, license, or record that was: "(A) obtained unlawfully or fraudulently; or (B) signed or issued unlawfully or under false representation[.]"[10]

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

[7] Tex. Occ. Code § 301.251(a).

[8] Tex. Occ. Code § 301.452(b)(1).

[9] Tex. Occ. Code § 301.452(b)(2), (5).

[10] Tex. Occ. Code § 301.451(3).

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] If the facts establish a basis for sanction, the Board's disciplinary matrix (Matrix) and aggravating and mitigating factors must be analyzed.[12] 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.[13]

B. LICENSING REQUIREMENTS

A person licensed in another state may obtain a license by endorsement in Texas by submitting proof of initial licensing by examination and evidence 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."[14] The Board has specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program."[15]

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

[12] 22 Tex. Admin. Code § 213.33.

[13] 22 Tex. Admin. Code § 213.33(b).

[14] Tex. Occ. Code § 301.260(a). The holder of a temporary license issued under this provision may obtain a permanent license if she "verifies [her] academic and professional credentials" and "satisfies any other requirement established by statute." Tex. Occ. Code § 301.260(b).

[15] 22 Tex. Admin. Code § 217.5(a)(1). For purposes of this PFD, citations to licensing requirements are to the rules in effect at the time Respondent was initially licensed in September 2020. *See* Tex. Occ. Code § 301.260(a). In October 2022, 22 Texas Administrative Code 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 proposed in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)). Additional changes to 22 Texas Administrative Code section 217.5, effective March 21, 2024, do not affect the subsections cited in this PFD. *See* 49 Tex. Reg. 1715 (Mar. 15, 2024).

An approved nursing education program is one 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.[16] To be approved by the Board to operate in Texas, a professional (RN) 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. If the governing entity of a program has a nursing education program in other jurisdictions (for example, a Florida-approved school seeks to operate an extension site in Texas), the program proposal must still be approved by the Board.[17]

An RN 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 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; [and]
>
> (iii) the program's nursing courses include didactic content 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

[16] Tex. Occ. Code § 301.157(d).

[17] *See* 22 Tex. Admin. Code § 215.3(a)(1), (2)(B) (requiring entities with programs in other jurisdictions to include additional information with their program proposals).

> clinical decision-making and safe patient care across the life span[.][18]

Staff had the burden of proving its allegations, and Respondent had the burden of proving mitigating factors, if any.[19] The standard of proof in this case is a preponderance of the evidence.[20]

IV. EVIDENCE

Staff offered eight exhibits that were admitted,[21] called Respondent as a witness, and presented testimony from the Board's Director of Enforcement, a Board Nursing Practice Consultant, and the Education Unit Director for the Florida Board of Nursing (FBON). Respondent testified on her own behalf and did not offer documentary evidence.

A. RESPONDENT

Respondent is a native of the Democratic Republic of Congo and immigrated to the United States in 2000, fleeing a civil war. After obtaining her LVN license in 2010, she worked fulltime as an LVN, including when she started the RN program at

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[18] 22 Tex. Admin. Code § 217.2(a)(4)(A)(i)-(iii). An additional requirement found in 22 Texas Administrative Code section 217.2(a)(4)(A)(iv) applied to baccalaureate nursing programs but is not pertinent here because Respondent obtained an associate's degree (not a bachelor's) from Siena. As of 2022, the requirements for substantially equivalent RN education standards were added to 22 Texas Administrative Code section 217.5(a)(1)(A). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022) (adopting the rule as proposed in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)).

[19] 1 Tex. Admin. Code § 155.427.

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

[21] Staff's Exhibits 1 (admitted for jurisdictional purposes), 2, 3, 5, 8-10, and 12 were admitted.

Siena, which she said she attended from May 2018 to approximately May 2020. Respondent learned about Siena from friends who were graduates of the school.

Per Respondent, the Siena program involved four days of in-person classes in Florida each month for a total of 44 days of classroom instruction. The program did not include clinical rotations. Respondent expected to graduate in October 2019, but Siena administrators said she was missing some credits. She took those classes online, finishing in May 2020. However, when she received her transcript from Siena in July or August 2020, it listed the original graduation date of October 2, 2019.[22]

Respondent was questioned about various forms she filled out for Siena that are also dated October 2, 2019, and appear to be the type of forms used for initial enrollment. The forms are titled "General Profile," "Application Form," "Student Enrollment Agreement," and the like.[23] Respondent said her original application was completed in May 2018 and she no longer has a copy. In October 2019, when she was told she had to take additional classes, she filled out the forms that are in evidence. She explained that she disagreed with the Siena administrators who claimed she was missing credits, but after some argument, they came to a "bargain" that she would finish the "missing" classes online instead of in person in Florida. At the time, Respondent stated, there were many people present who had come for the graduation and were in the same predicament, and the Siena administrators told all of them to "go ahead and fill in the paperwork." She said it was "as if [she] had to do the [application] process again." With respect to her transcript, Respondent said she did

[22] Staff Ex. 9 at BON Trial 0126.

[23] Staff Ex. 9 at BON Trial 0136-48.

not ask Siena to list an October 2019 graduation date and she was initially "surprised" to see it. She now believes the fact that the graduation date was unchanged indicates there actually had been "no need" for the online classes.

Respondent conceded she does not have documentary proof of her visits to Florida for in-person classes, apart from a receipt for two nights at a hotel (October 4-5, 2019) at the time she expected to graduate.[24] She said she traveled with other students and shared expenses for gas and rental lodging or hotel rooms, and she has lost paperwork over the years. She also agreed there is no documentary evidence that she took online classes through Siena between October 2019 and May 2020, though she found some text messages with Siena instructors about problems she had accessing online modules in late 2019.[25] Respondent said she became frustrated with Siena's administrators when she had to repeatedly request a copy of her transcript between May and July 2020,[26] and acknowledged that she sent them a text message stating, "...you are all very ridiculous and unprofessional. I don't why [sic] you are running a professional training school. Never seen this in my life[.]"[27] Despite the problems she had with Siena, Respondent said she was unable to find a Texas program that was "as flexible," which is why she had chosen Siena. She continued to work fulltime as an LVN throughout the program.

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[24] Staff Ex. 9 at BON Trial 0162-63.

[25] Staff Ex. 9 at BON Trial 0154, 158.

[26] Respondent supplied Staff with copies of some text messages she exchanged with an instructor at Siena during her attempts to obtain a transcript. Staff Ex. 9 at BON Trial 0156-57.

[27] Staff Ex. 9 at BON Trial 0157.

In June 2021, Respondent began a bachelor's degree completion program through Aspen University (Aspen), a fully online school. She earned a bachelor's degree in nursing from Aspen in February 2022. She stated that the Aspen program included "shadow health" exercises in which students could practice assessing patients through simulations, but no clinical rotations. Respondent noted her time at Aspen was after COVID-19 pandemic restrictions ended.[28]

As an LVN, Respondent worked at a nursing home, a rehabilitation facility, and, starting in 2018, in the medical-surgical unit of Wise Regional Health System (Wise), an acute care hospital in Decatur, Texas. She continued working at Wise after obtaining her RN license, while also working for a travel nurse staffing company. In July 2022, Respondent left Wise to work fulltime as a travel nurse. Currently, she works at a dialysis center.

Respondent agreed that there is a difference in scope of practice for an LVN versus an RN, because only an RN can administer a transfusion, perform a comprehensive assessment, and pronounce time of death, among other things. However, she noted that when she was an LVN, she often helped train incoming RNs, and she also performed many tasks—such as passing medication and basic patient assessments—without direct supervision. Though she conceded that an inadequately trained RN may pose a risk to patient safety, Respondent maintained she is a competent nurse and pointed out she has had no complaints or disciplinary action against her as a nurse, either as an LVN or RN.

[28] Respondent replied "yes" when asked if she attended Aspen "after COVID." Although it is unclear, it appears the reference to COVID-19 relates to the availability of in-person clinical education.

B. ANTHONY DIGGS

Mr. Diggs is the Director of Enforcement for the Board. He stated that in January 2023 the Board obtained a list of Texas-licensed individuals potentially involved in the Operation Nightingale scheme. As a general matter, Mr. Diggs explained, the Board relies on other states to confirm that an individual graduated from a program approved in those states and relies on the applicant's representations in an endorsement application. He said Staff's investigation concluded that Respondent did not graduate from an accredited institution and that she provided false or deceptive information to obtain a license. Mr. Diggs conceded that at the time Respondent obtained a Texas RN license in September 2020, the Board had no reason for concern about Siena. He also agreed that there is no record of complaints against Respondent for nursing practice issues.

C. SHERRI SUTTON-JOHNSON, RN, MSN, PHD

Dr. Sutton-Johnson is the Education Unit Director for the FBON, a role involving oversight of program licensing. She has been an RN for 33 years and obtained a master's degree in nursing in 2009 and a doctorate in public health in 2020. She testified that to be approved in Florida, a nursing program must meet requirements in the areas of faculty qualifications, written faculty policies regarding supervision of students, signed clinical affiliation agreements, appropriate clinical sites, and curriculum contents.

In December 2013, the FBON approved Siena to issue an associate's degree in nursing. Dr. Sutton-Johnson testified that the program was approved to provide only in-person instruction, with at least 50 percent of the hours to be comprised of clinical

instruction.[29] The program consisted of 74 credit hours over approximately 90 weeks.[30] Siena voluntarily closed in September 2021, but Dr. Sutton-Johnson said its approval by the FBON was terminated in August 2020 because of low NCLEX pass rates and its failure to become accredited within five years as required.

D. BEVERLY SKLOSS, MSN, RN

Ms. Skloss has been an RN in Texas for 36 years. She is a Nursing Consultant for Education to the Board, a position she has held for about 10 years.[31] She noted that, to be qualified for an RN license in Texas, Respondent had to graduate from an approved Texas program or a program that is substantially equivalent to Texas standards, and Siena was not alleged to be a Texas program.

After reviewing materials from Siena, the FBON, and the Florida Commission for Independent Education, Ms. Skloss concluded that Siena—at least in the form of the education Respondent received—was also not substantially equivalent to a Texas program. She said that programs issuing associate's degrees in nursing in Texas must have didactic and clinical components that cover five required subjects (medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing), and at least 50 percent of clinical hours must be in-person.[32] Based on Board records, Ms. Skloss testified that in 2019, students in Texas-approved programs for

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[29] Staff Ex. 5 at BON Trial 0058.

[30] Staff Ex. 5 at BON Trial 0061, 0064.

[31] Ms. Skloss's *curriculum vitae* is contained in Staff Ex. 10.

[32] Ms. Skloss cited 22 Tex. Admin. Code § 217.2(a)(4)(A), but that provision does not specify the percentage of clinical hours that must be in-person.

an associate's degree in nursing had a minimum of 384 and a maximum of 953 hours of hands-on clinical practice, with an average of 575 in-person clinical hours. She opined that the clinical component is crucial for students to learn judgment, critical thinking, and how to respond quickly under pressure.

Ms. Skloss noted that there are important differences in the scope of practice for an LVN versus an RN. An LVN has a focused scope of practice, but an RN is charged with performing comprehensive patient assessments. An LVN must be supervised, while an RN oversees patient care and can fill supervisory roles. And, Ms. Skloss said, an RN is needed in unstable situations because an LVN is supposed to care only for stable patients. Thus, Ms. Skloss pointed out, the fact that Respondent attended a legitimate LVN program and practiced successfully as an LVN is not a sufficient basis to conclude that she is safe to practice as an RN. Ms. Skloss said, "If you don't know what you don't know, your patient can be getting worse, and you don't know that." Respondent's lack of supervised clinical experience as an RN makes her continued RN practice a "serious risk to public safety," in Ms. Skloss's view.

V. ANALYSIS

The evidence raises important questions regarding Respondent's education through Siena, but the ALJ finds Staff did not prove that Respondent committed fraud in obtaining her diploma or license, so she is not subject to sanction on that basis. However, because Siena was not authorized to issue her a diploma, she was (and is, to the extent her current employment is as an RN and not an LVN) practicing with an RN license that was obtained using an unlawfully issued diploma, and she

may be subject to sanction for that conduct. Additionally, the education she received through Siena was not substantially equivalent to Texas standards, so she is not qualified to hold a Texas RN license.

A. STAFF DID NOT SHOW RESPONDENT COMMITTED FRAUD

Three provisions related to commission of fraud by Respondent are at issue: "fraud or deceit in procuring or attempting to procure a license" (Act section 301.452(b)(2)), using a license or diploma "that has been fraudulently purchased, issued, counterfeited, or materially altered" (Act section 301.452(b)(5)), and practicing nursing under a diploma, license, or record that was "obtained unlawfully or fraudulently" (Act section 301.451(3)(A)). Neither the Act nor Board rules appear to define fraud, so it is appropriate to apply the common law definition.[33] In this case, the pertinent 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.[34] Staff failed to show such knowledge or recklessness on Respondent's part.

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[33] Common law fraud requires that (1) a speaker made a representation; (2) the representation was material; (3) the representation was false; (4) when the representation was made, the speaker (A) knew the representation was false or (B) made the representation recklessly, as a positive assertion, and without knowledge of its truth; (5) the speaker made the representation intending that another act on it; (6) the other person relied on the representation; and (7) the representation caused the other person injury. *See "Fraud,"* O'Connor's Texas Causes of Action Ch. 12-A § 1 (2023 ed.) (collecting cases). The only part of the definition at issue here is Respondent's mental state (4). The parties did not dispute that Respondent (1) made a representation to the Board that she was qualified. The representation (2) was material to the license being approved and (3) is presumed false for purposes of this discussion. Respondent (5) made the representation with the intent that the Board rely on it and grant her a license. The Board (6) relied on the representation, and (7) alleges it suffered injury to its goal of protecting the public by only licensing qualified nurses.

[34] *Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998); *see also Fraud*, Black's Law Dictionary (12th ed. 2024) (providing two definitions with one requiring a knowing misrepresentation and the other requiring a reckless misrepresentation).

Staff compared Respondent's experience as an LVN student—at a Texas-approved program that included clinical rotations—to her studies through Siena and argued that she knew or should have known the RN program was not a legitimate school. While the argument has some merit, the evidence does not support knowing or reckless complicity in fraud by Respondent. When she started at Siena in 2018, eight years had passed since she had last been in school, and it is plausible she assumed Siena's structure was appropriate for an RN course of study. She had friends who graduated from the program and no reason to think she needed to investigate Siena's legitimacy with either the FBON or the Board. The next program Respondent took, through Aspen, was fully online and also had no clinical rotations, so she had additional reason to think her Siena education was genuine.

More troubling is the fact that much of the documentary evidence of Respondent's attendance at Siena reflects dates in October 2019, including the only hotel receipt from Florida and several of the "enrollment" documents, as well as the graduation date on her transcript. At the same time, Respondent's testimony that she attended in-person classes between May 2018 and October 2019 is plausible, even without receipts for travel or lodging. If she wanted to fraudulently obtain a diploma, she could have contended her program covered all elements the FBON and the Board required, but she readily acknowledged the classes did not include clinical rotations. She reasonably said it was worth the travel time and expense to study through Siena because the schedule allowed her to keep working fulltime.

Similarly, Respondent's subjective belief that Siena was a legitimate school is supported by the timing of her application for an RN license. She did not take the

NCLEX-RN or apply for an RN license in any state until her online classes were finished in 2020. She believed she was following the required steps to complete her associate's degree; had she been knowingly or recklessly participating in a fraudulent scheme, it is more likely she would have insisted on receiving the diploma immediately. Finally, the ALJ does not find Respondent's text messages (regarding unprofessionalism) to Siena administrators indicate knowledge of fraud so much as they reflect her frustration with poor communication.

Without sufficient evidence that Respondent was knowing or reckless as to the legitimacy of her diploma, the ALJ does not find that Respondent committed fraud within the meaning of Act section 301.452(b)(2). It is a closer question as to Act section 301.452(b)(5) because Respondent's diploma was arguably fraudulently issued—but that fraud was on the part of Siena, not Respondent. Act section 301.451(3)(A) also does not apply because Respondent did not *obtain* her diploma or license unlawfully or fraudulently. However, the ALJ finds that Respondent practiced using a diploma that had been unlawfully *issued*, as explained in the next section.

B. RESPONDENT'S DIPLOMA WAS ISSUED UNLAWFULLY

Subsection 301.451(3)(A) focuses on the nurse, disallowing practice by a person who obtains a diploma or license unlawfully or fraudulently. By contrast, subsection 301.451(3)(B) prohibits the "practice [of] nursing under a diploma [or] license...that was...(B) signed or issued unlawfully or under false representation[,]" focusing on the provenance of the credential. As Dr. Sutton-Johnson testified, the program that Siena was approved to operate required in-person education and clinical instruction was supposed to comprise 50 percent of the hours. Respondent

completed her missing credits between October 2019 and May 2020 online, not in person.[35] Further, she had no clinical rotations or instruction through Siena. Because Respondent did not meet the approved program components, Siena could not lawfully issue her an associate's degree. The degree that Siena awarded to Respondent was issued under the false representation that Respondent had completed all required elements of the FBON-authorized program.

Staff met its burden to show that Siena unlawfully issued Respondent's diploma. Pursuant to Act section 301.451(3)(B), Respondent cannot then use that diploma as the credential that entitled her to licensure by endorsement and to practice nursing in Texas. Further, even if the Florida-issued diploma is assumed valid for Texas purposes,[36] the education Respondent received is not substantially equivalent to Texas standards.

C. RESPONDENT DID NOT OBTAIN A SUBSTANTIALLY EQUIVALENT EDUCATION TO TEXAS STANDARDS

Licensure by endorsement requires that a nurse show she graduated from an approved nursing education program.[37] Siena was not a Board-approved program.[38] As an out-of-state program, it needed to provide an education substantially equivalent to a Texas-approved program in order for Respondent's degree to qualify

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[35] Respondent posited the classes may not have been necessary because her transcript ultimately listed her original graduation date in October 2019. Nonetheless, Siena was not authorized by the FBON to conduct any education online.

[36] Mr. Diggs testified the Board generally relies on the issuing state to confirm that an individual graduated from a program approved in that state. It is arguably beyond the scope of a SOAH proceeding to determine the validity of a Florida-issued diploma, though Dr. Sutton-Johnson's testimony carries considerable weight in that regard.

[37] Tex. Occ. Code § 301.260; 22 Tex. Admin. Code 217.5(a)(1).

[38] Tex. Occ. Code § 301.157(d).

her for Texas licensure.[39] Texas standards require that RN programs include both didactic and clinical instruction in five subject areas and that some portion of clinical hours be conducted in-person with live patients and faculty supervision.[40] The average Texas associate's degree program in 2019 included 575 hours of in-person, hands-on clinical experience. It is undisputed that Respondent did not receive *any* clinical instruction through Siena. Therefore, Respondent did not receive a substantially equivalent education to a Texas program that would qualify her for an RN license.[41]

D. SANCTION ANALYSIS

Violating a provision of the Act is conduct subject to discipline under Act section 301.452(b)(1). The Board may discipline Respondent for practicing under a diploma that was issued unlawfully in violation of the prohibition in Act section 301.451(3)(B). The Matrix for Act section 301.452(b)(1) focuses primarily on violations of a Board order and does not fit this case squarely.[42] However, Respondent's conduct would fall into the second tier because lacking a lawfully issued diploma is a substantive issue, not a procedural or technical matter as covered by the first tier.[43] At the same time, she did not violate a substantive probationary

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[39] 22 Tex. Admin. Code § 217.2(a)(4).

[40] While Ms. Skloss stated that 50 percent of clinical hours must be hands-on with live patients, the rule she cited (22 Texas Administrative Code section 217.2(a)(4)(A)) does not specify a percentage. However, it is undisputed that Texas requires some amount of "supervised clinical learning experiences" in all five subject areas. 22 Tex. Admin. Code § 217.2(a)(4)(A)(iii).

[41] Tex. Occ. Code § 301.157(d).

[42] 22 Tex. Admin. Code § 213.33(b) (graphic).

[43] In addition, the second tier references the remediation of a "competency issue raised by the documented violation[,]" which is pertinent to the circumstances here. 22 Tex. Admin. Code § 213.33(b) (graphic).

restriction or stipulation in a prior Board order, so the third tier is inappropriate. Within the second tier, sanction level I applies where a nurse can be ordered to complete the requirements of a prior Board order; no such order exists. Thus, sanction level II appears to fit better, calling for license suspension or revocation.

In determining the proper sanction, the Board is to apply various aggravating and mitigating factors. Relevant here, the Board should consider that there is no evidence of actual harm to patients, clients, or the public from Respondent's practice, and no actual damages were shown, whether physical, economic, or otherwise.[44] She has worked in the nursing field for nearly 14 years without issues and has no prior discipline from the Board or any other regulatory body.[45]

Respondent's conduct is consistent with a sincere belief that she was obtaining a legitimate degree from Siena. She waited until she completed all the courses that she was told she needed before applying to take the NCLEX-RN or for an RN license, and she then continued to pursue higher education through Aspen. Her dedication to her studies appears genuine and her efforts indicate truthfulness and trustworthiness.[46] Although Siena unlawfully issued her diploma, Respondent passed the NCLEX-RN and the record does not show she purposely misrepresented her credentials. To the extent employers and other relied on those credentials, there is no evidence the reliance was unsafe given Respondent's clean employment

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[44] 22 Tex. Admin. Code § 213.33(c)(1), (8).

[45] 22 Tex. Admin. Code § 213.33(c)(4), (6)-(7).

[46] 22 Tex. Admin. Code § 213.33(c)(2).

record.[47] The persons allegedly involved in Operation Nightingale exploited gaps in state regulatory schemes, indicating that system dynamics were a factor.[48]

Despite these points in Respondent's favor, she had no clinical rotations with live patients and faculty supervision through Siena. As a result, her RN education was inadequate and the potential for harm to patients remains.[49] The Board has specified that violation of a provision of the Act or a Board rule prevents a person from being assumed to have good professional character related to the practice of nursing.[50] Respondent's educational deficiencies call into question whether she is safe to practice autonomously as an RN and can make appropriate clinical judgements affecting her patients.[51] Ultimately, although Respondent appears to have been a victim or at worst an unwitting participant in an unlawful diploma scheme, the Board's duty is to the public. Allowing Respondent to continue practicing as an RN has the potential for public harm, and the Board should address that risk through license suspension or revocation.

The Board has broad discretion in fashioning the correct sanction in any given case. Though it would be appropriate to stop Respondent from practicing as an RN until she addresses any educational gaps, the ALJ recommends that the Board

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[47] 22 Tex. Admin. Code § 213.33(c)(3).

[48] 22 Tex. Admin. Code § 213.33(c)(12).

[49] 22 Tex. Admin. Code § 213.33(c)(1).

[50] 22 Tex. Admin. Code §§ 213.33(c)(16), .27(b). While lack of good professional character is not *per se* demonstrated by violation of the Act or Board rule, a person who "provides satisfactory evidence that he/she has not committed a violation of the Nursing Practice Act or a rule adopted by the Board is considered to have good professional character related to the practice of nursing." 22 Tex. Admin. Code § 213.27(b).

[51] 22 Tex. Admin. Code § 213.27(c)(1), (3).

consider an enforced suspension of her RN license as an alternative to revocation. The suspension would be for a period of time adequate to allow Respondent to complete a remedial clinical practice program or other requirements imposed by the Board and could trigger revocation of her RN license if she fails to timely satisfy those requirements. To avoid any doubt, the Board should specify that there is no impact to Respondent's LVN license.

Staff requested denial of license renewal as an additional or alternative sanction to revocation. The record did not indicate a renewal application is pending. And, if the Board suspends or revokes Respondent's RN license, she will have to prove her fitness before her license may be reinstated.[52] Accordingly, the ALJ does not recommend denial of license renewal on the facts as presented.

VI. FINDINGS OF FACT

1. On June 3, 2010, the Texas Board of Nursing (Board) issued Licensed Vocational Nurse (LVN) License No. 228234 to Mandikala Ikota (Respondent).

2. In May 2018, Respondent began studying for an associate's degree in nursing at Siena Education Center, LLC, d/b/a Siena College of Health (Siena), based in Lauderhill, Florida.

3. Between May 2018 and October 2019, Respondent visited Florida monthly for around four days of in-person classes.

4. Respondent did not have clinical rotations with live patients and faculty supervision as part of her education through Siena.

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[52] *See* 22 Tex. Admin. Code § 213.26(a), (d).

5. Respondent expected to graduate from Siena in October 2019, but learned she was missing credits.

6. Between October 2019 and May 2020, Respondent completed online classes to obtain the missing credits.

7. In July or August 2020, Respondent received a transcript from Siena that reflected a graduation date of October 2, 2019.

8. On September 23, 2020, Respondent took and passed the National Council Licensing Examination (NCLEX) for registered nurses. She then obtained a registered nurse (RN) license in Florida.

9. Respondent applied to the Board for a Texas RN license by endorsement. On September 29, 2020, the Board issued RN License No. 1016490 to Respondent.

10. In February 2022, Respondent earned a bachelor's degree in nursing from Aspen University, a fully online school. The program did not include live clinical rotations.

11. Respondent sincerely believed her program at Siena was a legitimate course of study for an associate's degree in nursing.

12. Respondent did not commit fraud in the representations she made to the Board for her RN license application.

13. The Florida Board of Nursing (FBON) authorized Siena to operate an associate's degree program only via in-person education in Florida and required at least 50 percent of the hours to be comprised of clinical instruction.

14. Respondent did not complete the program that the FBON authorized Siena to operate.

15. Siena was not authorized by the Board to operate a program in Texas.

16. Texas requires RN programs to include didactic and clinical instruction in five subject areas and some portion of clinical hours must be conducted in-person with live patients and faculty supervision.

17. In 2019, Texas-approved associate's degree programs included a minimum of 384 and a maximum of 953 hours of hands-on clinical practice, with an average of 575 in-person clinical hours.

18. Siena's issuance of an associate's degree diploma to Respondent was not authorized by either the FBON or the Board.

19. An RN who is not properly trained poses a risk of harm to patients.

20. Between 2010 and 2020, Respondent practiced nursing in Texas full time under her LVN license, working at a nursing home, a rehabilitation facility, and, starting in 2018, in the medical-surgical department of Wise Regional Health System (Wise), an acute care hospital. She continued working at Wise after obtaining her RN license in 2020, and also worked at a travel nurse staffing agency. In July 2022, she left Wise and worked fulltime as a travel nurse. She currently works at a dialysis center.

21. Respondent has had no complaints or disciplinary action against her as a nurse, either as an LVN or an RN.

22. In January 2023, the Federal Bureau of Investigation and the federal Health and Human Services Commission-Office of Inspector General announced "Operation Nightingale," a law enforcement action against a fraudulent nursing diploma scheme. Siena was identified as a school potentially involved in issuing fraudulent diplomas. Respondent's name appeared on a list of individuals who may have—through the alleged scheme—obtained nursing diplomas and subsequently secured licenses to practice nursing.

23. Upon learning of Operation Nightingale, the staff (Staff) of the Board, opened an investigation, and proposed to revoke Respondent's RN license.

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

25. On May 28, 2024, Staff sent Respondent its Second Amended Notice of Hearing and First Amended Formal Charges. Together, the Notice of Hearing and First Amended Formal Charges contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections

of the statutes and rules involved; and 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.

26. SOAH Administrative Law Judge Pratibha J. Shenoy convened the hearing on the merits via Zoom videoconference on June 13, 2024. Assistant Attorney General Austin Havens represented Staff. Respondent appeared with her attorney, Marc Meyer. The record closed on June 14, 2024, with the filing of admitted exhibits.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code chs. 301, 304.

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

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

5. The standard of proof in this case is 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. Serv. 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 committed fraud or deceit in procuring or attempting to procure a license; used a diploma that was fraudulently obtained, purchased, issued, counterfeited, or materially altered; or practiced under a diploma, license or record that was obtained unlawfully. Tex. Occ. Code §§ 301.451(3)(A), .452(b)(2), (5).

7. Respondent practiced nursing under a diploma that was unlawfully issued, in violation of the Nursing Practice Act, and she is subject to discipline for that conduct. Tex. Occ. Code §§ 301.451(3)(B), .452(b)(1).

8. Respondent's program through Siena was not an approved Texas program, and it was not substantially equivalent to Texas standards for RN programs. Tex. Occ. Code §§ 301.157(d), (d-4), .260; 22 Tex. Admin. Code §§ 217.2(a)(4)(A), .5(a)(1).

VIII. RECOMMENDATION

The Board should either suspend or revoke Respondent's RN license. The ALJ recommends the Board consider an enforced suspension of the RN license for a period of time adequate to allow Respondent to complete a remedial clinical practice program or other requirements imposed by the Board, with automatic revocation of her RN license if she fails to timely satisfy those requirements. The ALJ further recommends that the Board specify in its order that there is no impact to Respondent's LVN license.

Signed August 6, 2024

ALJ Signature:

Pratibha J. Shenoy

Pratibha J. Shenoy

Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 26, 2024

Austin Havens
Office of the Attorney General

VIA EFILE TEXAS

Mandikala Ikota, c/o Marc Meyer
Law Office of Marc Meyer, PLLC

VIA EFILE TEXAS

RE: SOAH Docket No. 507-24-05496.TBN;
Texas Board of Nursing v. Mandikala Ikota

Dear Parties:

I issued a Proposal for Decision (PFD) in this case on August 6, 2024. On August 21, 2024, Mandikala Ikota (Respondent) filed exceptions to the PFD. The staff (Staff) of the Texas Board of Nursing (Board) did not file exceptions but filed a response to Respondent's exceptions.[1]

Respondent's exceptions are to Findings of Fact (FOF) 15-18 and Conclusions of Law (COL) 7-8 concerning whether Siena Education Center, LLC, d/b/a Siena College of Health (Siena) was authorized to issue a diploma to Respondent or offered a registered nursing (RN) education substantially equivalent to Texas standards. The FOF to which Respondent objects are supported by the record evidence, and the COL Respondent finds inaccurate are proper applications of the law to the facts established by the evidence. Therefore, I do not find any changes to the PFD are warranted.

As discussed in the PFD at pages 4-5 and 16-17, the Board may take disciplinary action against Respondent for a violation of the Nursing Practice Act,

[1] The response was timely filed on September 6, 2024, the deadline set in Order No. 4.

including the practice of nursing under a diploma that was signed or issued unlawfully or under false representation. Notably, Respondent did not object to FOF 13 (describing the program that Siena was authorized to provide by the Florida Board of Nursing (FBON)) or FOF 14 (finding that Respondent did not complete the program that the FBON authorized Siena to operate). FOF 13-14 are established by the record evidence[2] and support FOF 18, which finds that Siena's issuance of a diploma to Respondent was not authorized by either the FBON or the Board. Based on FOF 13-14 and 18, COL 7 properly concludes that Respondent practiced nursing under a diploma that was unlawfully issued.

To be eligible for a nursing license by endorsement, a nurse must show she graduated from an approved nursing education program (which, as relevant here, is a program approved by the Board or approved by the FBON and the Board) or that she graduated from a program in another state that has substantially equivalent standards to a Texas program.[3] FOF 15 states that Siena was not authorized by the Board to operate a program in Texas, a finding based on uncontroverted testimony.[4] FOF 16-17 specify the standards required for substantially equivalent programs and are based on record evidence.[5] In turn, these FOF establish the basis for COL 8, which properly concludes that Siena was not an approved Texas program and was not substantially equivalent to Texas standards for registered nursing programs.

Finally, Respondent objects to the sanction I recommend be applied to Respondent's RN license.[6] Although the sanction is not what it requested, Staff supports the recommended sanction in its response to exceptions. The Board has broad discretion to determine the appropriate action in this case, and I have provided a list of the aggravating and mitigating factors that should be considered in the

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[2] PFD at 11-12.

[3] *See* PFD at 5-7, 12-13.

[4] *See* PFD at 12.

[5] PFD at 12-13.

[6] Respondent agrees with my recommendation that no action be taken against Respondent's Licensed Vocational Nurse (LVN) credential, and that any Board Order should make clear that Respondent's LVN license is unaffected.

Board's analysis, as well as my reasoning for the sanction I support.[7] I see no basis to alter that recommendation.

This case is now ready for action by the Board.

Pratibha J. Shenoy
Administrative Law Judge

CC: Service List

[7] *See* PFD at 18-20.