DOCKET NUMBER 507-24-06786

IN THE MATTER OF	**§**	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	**§**	
NUMBER RN 1020497,	**§**	**OF**
ISSUED TO	**§**	
JACKIE M. KABADILA	**§**	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: JACKIE M. KABADILA
c/o MARC M. MEYER, ATTORNEY AT LAW
2300 WOODFOREST PKWY N., STE. 600
MONTGOMERY, TEXAS 77316

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

At the regularly scheduled public meeting on July 17, 2025, the Texas Board of Nursing (Board) considered the following items: the Proposal for Decision (PFD) regarding the above cited matter; Staff's recommendation to the Board regarding the PFD and order; and Respondent's recommendation to the Board regarding the PFD and order, if any.

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

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

Recommendation for Sanction

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

Respondent attended Siena College of Health (Siena), graduating on March 6, 2020, receiving an Associate's Degree in Nursing (ADN), passing the National Council Licensing Examination (NCLEX-RN) and obtaining licensure in Florida in November

2020.[1] Subsequently, she applied for her Texas Registered Nurse (RN) license in November 2020 representing that she graduated with her ADN from Siena. Texas granted her licensure as an RN on December 4, 2020. Respondent's ADN was issued unlawfully[2] because it did not conform to the Florida Board's approved program outline. Specifically, she attended classes for less than 12 weeks in less than a year's time, performed no clinicals on live patients, failed to complete several theory and clinical courses, fifteen courses were listed as completed on her transcript which were not on the approved program outline, and she only used five out of the twenty-four required textbooks.[3] Thus, Respondent's education was not completed as approved by the Florida Board and she never worked in Florida as a nurse as required by November 2020 Texas Board rules.[4]

Since obtaining her Texas license, Respondent has practiced as a RN in several positions in violation of Texas Occupations Code §301.451(3)(A) and is subject to discipline under Texas Occupations Code §301.452(b)(1).[5] Additionally, the Board's reliance on Respondent's false representations when approving her endorsement and renewal applications while Respondent did not hold the requisite degree or training constituted unprofessional conduct.[6] The Board and the public were likely to be harmed as a result, as nursing applicants who lack the required education and experience pose a risk of harm to patients and public safety. 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)&(b)(10). For this reason, the Board agrees with the ALJ's recommended sanction of revocation.

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 1020497, previously issued to JACKIE M. KABADILA, 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 17th day of July, 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. 507-24-06786 (March 31, 2025), Exceptions Letter issued April 16, 2025.

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[1] PFD at p. 3.
[2] Conclusion of Law No. 6.
[3] PFD at p. 29-30.
[4] PFD at p. 31.
[5] PFD at p. 32.
[6] PFD at p. 36, Conclusion of Law No. 10, 11, 12.

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 31, 2025

Tiffani Collins & Jeff Lutz
Petitioner

VIA EFILE TEXAS

Sandra Thornton & Marc Meyer
Respondent

VIA EFILE TEXAS

RE: SOAH Docket Number 507-24-06786; *Texas Board of Nursing v. Jackie M. Kabadila*

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. 507-24-06786 Suffix: NTG

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
v.
JACKIE M. KABADILA,
RESPONDENT

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
JACKIE M. KABADILA,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke or, in the alternative, deny renewal of, the Registered Nurse (RN) credential held by Jackie Kabadila (Respondent) based on allegations that Respondent fraudulently obtained her license, diploma, or transcript; practiced under an unlawfully or fraudulently issued license, diploma, or transcript; lacked the requisite approved and/or substantially equivalent education; and engaged in unprofessional conduct. The Administrative Law Judge (ALJ) finds that Staff failed to prove Respondent engaged in fraud or deceit. Nevertheless, the ALJ recommends that that Board revoke Respondent's license because the preponderant evidence demonstrated that

Respondent's transcript and license were, unbeknownst to her, issued unlawfully, and she did not obtain the requisite education for licensure.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

State Office of Administrative Hearings (SOAH) ALJ Shelly M. Doggett convened a hearing on the merits via Zoom videoconference on November 19, 2024. Assistant Attorney General Tiffani N. Collins represented Staff, and attorney Marc M. Meyer represented Respondent, who also appeared. Pursuant to Order No. 7, the record closed on February 14, 2025, following the filing of admitted exhibits and written closing statements submitted pursuant to an agreed post-hearing briefing schedule. Matters of notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law.

II. BACKGROUND

This case stems from an investigation, known as "Operation Nightingale," by the U.S. Department of Justice, Federal Bureau of Investigation (FBI), and Department of Health and Human Services Commission Office of Inspector General into nursing schools that were purportedly selling illegitimate nursing diplomas and transcripts. Among other schools, the Siena Education Center, LLC, doing business as Siena College of Health (Siena), located in Lauderhill, Florida, was reported to have issued diplomas and transcripts to individuals who did not receive instruction from the school or did not receive the clinical training required to earn a transcript or diploma.[1]

[1] *See* Staff Ex. 9 at 148. Staff Exhibit 9 was admitted for the purpose of notice and not admitted for the truth of the matters asserted therein.

Respondent attended a Texas-approved program and became a Licensed Vocational Nurse (LVN) in Texas on February 26, 2009, the validity of which is not in dispute.[2] In 2020, she received her Associate's Degree in Nursing (ADN) from Siena. After taking and passing the National Council Licensing Examination (NCLEX-RN),[3] Respondent obtained her RN license in Florida in November 2020, and then applied for her Texas RN license by endorsement the same month.[4] Respondent represented in her endorsement application that she graduated with her ADN from Siena on March 6, 2020.[5] The Board granted her RN License No. 1020497 on December 4, 2020.[6] On February 5, 2022, Respondent applied with the Board to renew her license, reiterating that she had graduated from Siena's ADN program.[7] The Board renewed her license that same day.[8]

After details of the Operation Nightingale investigation were made public, Staff notified Respondent on March 6, 2023, that she had been included on a list of students that purportedly purchased fraudulent credentials.[9] Staff thereafter issued

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[2] Respondent holds LVN License No. 220816. Staff Ex. 2 at 58. References in this Proposal for Decision (PFD) to "license" or to Respondent's practice of nursing are to her RN license and RN practice in Texas, unless otherwise specified.

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

[4] Staff Ex. 7.

[5] Staff Ex. 7 at 130.

[6] Staff Ex. 2 at 60.

[7] Staff Ex. 8 at 140.

[8] Staff Ex. 2 at 60. Respondent also renewed her LVN license on that date. Staff Ex. 2 at 58.

[9] Staff Ex. 3 at 64.

Formal Charges against Respondent seeking discipline for her involvement with the implicated nursing program, and Respondent appealed to SOAH.

Staff ultimately filed a First Amended Formal Charge alleging that (1) Respondent obtained her Texas RN license through fraudulent means; (2) Respondent was prohibited from practicing nursing because her RN license and Siena diploma were obtained or issued unlawfully; (3) Respondent cannot be certified as a graduate of a nursing program because she did not complete Siena's approved program and/or did not receive education substantially equivalent to a Texas nursing education; and 4) Respondent engaged in unprofessional conduct by engaging in conduct that may endanger clients and providing false and deceptive information in her applications. According to Staff, these grounds give rise to disciplinary action, including revocation of Respondent's RN license, or, alternatively, denying renewal of that license.

Respondent counters that she did not commit fraud, believed Siena was a legitimate program, and did not intentionally misrepresent her nursing education. Respondent further argues that her diploma was lawfully issued because she graduated from an approved nursing program or a substantially equivalent program. In the alternative, Respondent claims that the Board waived any deficiencies in her education by issuing the endorsement license. Finally, Respondent alleges that, under the rules cited by Staff, she cannot be disciplined for unlawful or false representations made by others regarding the issuance of her diploma.

III. APPLICABLE LAW[10]

Pursuant to the Texas Nursing Practice Act (Act), the Board is responsible for regulating nurses.[11] Each applicant for an RN license must submit to the Board a sworn application that demonstrates the applicant's qualifications, accompanied by evidence that the applicant has, among other things, successfully completed an approved nursing program.[12] A person may not sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record, nor may they assist another person in doing so.[13] In addition, a person may not practice nursing under a diploma, license, or record that was obtained unlawfully or fraudulently or that was signed or issued unlawfully or under false representation.[14]

A. LICENSING REQUIREMENTS

A person licensed in another state may qualify for a temporary license by endorsement in Texas by submitting proof of initial licensing by examination and evidence that the person "possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state."[15] A person who holds a temporary license may obtain a permanent license if

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[10] For purposes of this PFD, citations to licensing requirements will be to the rules in effect at the time of Respondent's endorsement application and licensing (November and December 2020), unless otherwise specified. *See* Tex. Occ. Code § 301.260(a)(2). The Board's rules at 22 Texas Administrative Code chapters 211 to 228 are hereinafter referred and cited to as "Rule _____."

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

[12] Tex. Occ. Code § 301.252(a).

[13] Tex. Occ. Code § 301.451(1)-(2).

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

[15] Tex. Occ. Code § 301.260(a)(2).

she "verifies [her] academic and professional credentials" and "satisfies any other requirement established by statute."[16]

At the relevant times in 2020, Rule 217.5(a)(1) specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program" and "practiced nursing in another state within the four years immediately preceding" the request for licensure.[17] 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 of another state and the Board.[18]

Rule 217.5(a)(1) was amended in 2022 to require either "[g]raduation from an approved Texas nursing education program or a program with substantially

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[16] Tex. Occ. Code § 301.260(b).

[17] Rule 217.5(a)(1).

[18] Tex. Occ. Code § 301.157(d). Regarding a program approved by the state board of nursing of another state, In addition, the Board:

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

Tex. Occ. Code § 301.157(d-4).

equivalent education standards to a Texas approved nursing program[.]"[19] 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 clinical decision-making and safe patient care across the life span[.]"[20]

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

[20] Rule 217.2(a)(4)(A)(i)-(iii). An additional requirement found in Rule 217.2(a)(4)(A)(iv) applicable to baccalaureate nursing programs 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 Rule 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)).

B. DISCIPLINE

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

- a violation of the Act, a Board rule or regulation, or an order issued under the Act; or
- use of a nursing license, diploma, permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered.[21]

Rule 217.12, meanwhile, defines categories of "unprofessional conduct" that the Board believes are likely to deceive, defraud, or injure, and is intended to protect clients and the public from incompetent or illegal conduct.[22] Actual injury to a client need not be established to demonstrate an unprofessional conduct violation.[23] Staff alleges that Respondent engaged in the following categories of unprofessional conduct:

- Conduct that may endanger a client's life, health, or safety; and
- Providing information which was false, deceptive, or misleading in connection with the practice of nursing.[24]

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

[22] Rule 217.12. A person is also subject to disciplinary action by the Board pursuant to Act section 301.452(b)(10) for engaging in unprofessional conduct in the practice of nursing. Tex. Occ. Code § 301.452(b)(10). Despite alleging that Respondent violated Rule 217.12, Staff's First Amended Formal Charge failed to cite the Act's corresponding disciplinary provision. Therefore any disciplinary action under this particular statute is waived it. *See* Staff's First Am. Formal Charge (filed May 23, 2024).

[23] Rule 217.12.

[24] Rule 217.12(4), (6)(H).

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.[25] The Board has adopted a matrix (Matrix), which categorizes violations into tiers and sanction levels based on the seriousness of the offense and risk of harm to patients or the public, to be used in determining the appropriate disciplinary action.[26] When deciding the degree of sanction to be imposed within the authorized range, the Board shall consider: (1) whether the person is being disciplined for multiple violations or has previously been the subject of disciplinary action by the Board and has previously complied with applicable law; (2) the seriousness of the violation; (3) the threat to public safety; and (4) any other aggravating or mitigating factors in the Matrix and Board rules.[27]

The standard of proof is a preponderance of the evidence.[28] Staff has the burden of proving its allegations, and Respondent has the burden of proving any mitigating factors.[29]

IV. EVIDENCE

Staff called Jason Bowman, an Educational Policy Analyst for the Florida Commission for Independent Education (FCIE); Danielle Green, the Assistant Director of Enforcement for the Board; Respondent; and Dr. Janice Hooper, a Board

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

[26] Rule 213.33(b).

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

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

[29] 1 Tex. Admin. Code § 155.427.

consultant designated as an expert on nursing education standards in Texas, to testify. The ALJ admitted 11 of Staff's exhibits.[30] Respondent did not call any additional witnesses or move to admit any exhibits.

A. TESTIMONY OF MR. BOWMAN

Mr. Bowman has worked for the FCIE since 2019 and currently serves as an Educational Policy Analyst. He stated that FCIE, along with the Florida Board of Nursing (Florida Board), are responsible for regulating and licensing private nursing schools, including programs like Siena, in Florida.

Mr. Bowman testified that Siena had been licensed by FCIE to provide a prelicensure ADN program, and prepared and completed program outlines and other materials in accordance with annual licensure and renewal requirements. This program outline, according to Mr. Bowman, set forth the requirements of the program as approved by the FCIE. In particular, Mr. Bowman stated that Siena's program outline specifies that the school was approved to offer an in-person, or "campus" program rather than a program offered online or through correspondence.[31] The approved length of the program, moreover, was 90 weeks, with 74 credit hours to be completed during that time.[32] Mr. Bowman further testified that the program was to last six semesters and consist of at least 50 percent

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[30] Many of Staff's exhibits were admitted by agreement, though some only for a limited purpose, as indicated below. Staff's admitted exhibits include Staff Exhibit 1; Staff Exhibit 2; Staff Exhibit 3 (admitted for jurisdictional purposes only); Staff Exhibit 4 (admitted for jurisdictional purposes only); Staff Exhibit 5 (admitted for jurisdictional purposes only); Staff Exhibit 6; Staff Exhibit 7; Staff Exhibit 8; Staff Exhibit 9 (admitted for purposes of notice only); Staff Exhibit 11; and Staff Exhibit 13.

[31] *See* Staff Ex. 1 at 29.

[32] *See* Staff Ex. 1 at 29.

clinical training, which must be "live."[33] A student who attended for less than 90 weeks or who did not participate in any live clinicals would not, per Mr. Bowman, have completed Siena's program as approved and should not be issued a degree, diploma, and transcript.

Regarding the program's course and clinical requirements, Mr. Bowman said these could be found in the outline's course list. The list categorized courses into general education requirements, prerequisites, and 44 hours of "major core courses," which included instruction credit hours, lab credit hours, and 22 credit hours devoted to clinicals.[34] By Siena's own "catalogue,"[35] Mr. Bowman testified, 22 credit hours were equivalent to 990 clinical or externship hours because the 22 semester credit hours are multiplied by 45 for each credit hour. He noted, however, that Siena's catalogue later indicates that 540 clinical or externship hours are required for the program. Therefore, he opined, Siena required somewhere between 540 and 990 clinical hours of instruction in its ADN program outline.

The program outline also included a list of 24 textbooks Siena was approved to use for instruction and coursework.[36] Siena was required to use these exact books

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[33] *See* Staff Ex. 1 at 30. Although FCIE reportedly issued an emergency order in March 2020 that allowed nursing programs to conduct theory portions of programs online due to the COVID-19 pandemic, provided that they communicated this to FCIE, Mr. Bowman testified that Siena never communicated such a request. Therefore, Siena was not authorized to conduct online instruction under the order.

[34] *See* Staff Ex. 1 at 32.

[35] Mr. Bowman did not identify what catalog he was referencing or if the catalog was another description for the program outline. The ALJ could not locate the figures cited by Mr. Bowman in the admitted outline. Staff Ex. 1 at 29-35.

[36] *See* Staff Ex. 1 at 35.

during instruction and would have been required, according to Mr. Bowman, to update FCIE if its students were not using those books or were using alternatives. Using only a portion of the books on the list, moreover, would not be consistent with the program's approval, Mr. Bowman stated, and FCIE staff purportedly would have inquired if they had known that was occurring.

Mr. Bowman also testified that FCIE has rules regarding transcripts issued by programs like Siena, and that inspectors can ask institutions to correct transcripts that do not comport with those requirements when they are discovered. At a minimum, Mr. Bowman stated that transcripts must include the name of the institution and awarded credential, as well as specify the names and dates or semesters of courses attended and the grade or credit awarded. Credits transferred from other institutions should also, he noted, be marked as such on the transcript.

Upon reviewing Respondent's transcript from Siena,[37] Mr. Bowman stated that some of the required information appeared to be missing. He testified that the courses were missing dates or semesters indicating when they were taken. In addition, he did not see any indication that transfer credits were included on the transcript. Mr. Bowman nevertheless conceded that he was unaware of any legal consequence in Florida for individuals who have received a transcript that does not comport with FCIE's transcript rules.

Mr. Bowman said he first learned of Operation Nightingale, an investigation of the sale of fraudulent diplomas and transcripts by people affiliated with

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[37] *See* Staff Ex. 13 at 247.

FCIE-licensed institutions, in January 2023. As for Siena's status, he said its RN program was placed on probation by the Florida Board sometime in 2019 due to low NCLEX pass rates and lack of accreditation as an RN program, which is required under the Florida Board's rules.[38] Mr. Bowman testified that Siena gave notice of its intent to close in October 2021, and that all students had been "taught out" by that date. However, he was not aware of FCIE ever taking action to strip Siena of its authority to issue degrees. He stated that FCIE would have conducted site visits to Siena's campus on a regular basis before its initial licensure and then a final onsite visit around January 2022 after the Florida Board closed Siena's ADN program.

Mr. Bowman described Respondent as a consumer of Siena's program, though he had no personal knowledge relating to her or her case. He testified that a nursing institution's owners should be aware of program requirements and that there is no requirement for nursing students to contact FCIE or know the nursing education standards. When asked if he was aware of any inquiries regarding the "approval" status of nursing programs, Mr. Bowman recalled a single email in September 2020 wherein someone asked about the licensure status of an institution.

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[38] According to Staff Exhibit 1, which includes an affidavit from Sherri Sutton-Johnson, the Director of Nursing Education for the Florida Board, Siena received approval from the Florida Board on December 9, 2013, to offer a professional associate degree in nursing program. She stated that Siena's program was approved as an in-person nursing program and not for online instruction, with at least 50 percent of the hours to be made up of clinical instruction. She further stated that Siena's program was terminated by the Florida Board on or about August 11, 2020, due to low NCLEX-RN pass rates and lack of accreditation, and that students could not be admitted after that date. Staff Ex. 1 at 2.

B. TESTIMONY OF MS. GREEN

Ms. Green, a licensed RN, has worked at the Board for 11 years and has been the Assistant Director of Enforcement for the last two years. She performs practice and eligibility investigations and is also responsible for department oversight. According to Ms. Green, it is the Board's mission to protect the public and ensure nurses, who engage with patients of all kinds, including vulnerable patients, are properly educated and competent to practice safely.

Ms. Green testified that Respondent applied for licensure by endorsement with the Board after becoming licensed in another state.[39] She described the endorsement licensure process—which involves submitting to a criminal background check, showing proof of passing the jurisprudence examination, and verification of the other state's license—as more abbreviated than that for licensure by examination, where the Board would verify information with the applicant's school by obtaining an affidavit of graduation, among other things. Four days after applying for endorsement licensure, Ms. Green stated, Respondent became a licensed RN in Texas.

When the application was submitted, Ms. Green said the Board had no concerns related to Siena, and would not have made further inquiry into Respondent's education beyond the representations in the application. She stated that it was presumed, at the time, that the education of Florida-licensed applicants had already been verified. However, the Board subsequently determined in

[39] *See* Staff Ex. 7.

January 2023 that it needed to further investigate Respondent's credentials after receiving information from the FBI concerning a criminal investigation involving Siena and other nursing schools. Specifically, Ms. Green testified that the Board became concerned about Respondent after receiving an affidavit reportedly prepared by Siena's owner. That affidavit included Respondent on a list of students who allegedly had not completed the required program hours or clinical training necessary to obtain their degrees or transcripts.[40]

According to Ms. Green, Respondent's endorsement application form included the Board's contact information at the top and a list of eligibility requirements.[41] She noted the application form states an applicant must have graduated from an approved school of nursing with comparable didactic and clinical curriculum components to those required by the Board in medical-surgical nursing, geriatric nursing, maternal/child nursing, pediatric nursing, and mental health nursing[42] In addition, the form indicates that an applicant must hold at least one license in another state territory with substantially equivalent requirements to Texas.[43] Applicants must also, Ms. Green stated, attest that they understand and meet all the requirements to practice for the type of license requested, and that it is a violation to submit false statements.[44] Finally, Ms. Green emphasized that the application includes an admonishment stating it is the applicant's "responsibility to

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[40] *See* Staff Ex. 9 at 148-49, 173.

[41] Staff Ex. 7 at 121-22.

[42] Staff Ex. 7 at 122.

[43] Staff Ex. 7 at 122.

[44] Staff Ex. 7 at 134.

read the instructions carefully and make sure that you meet the qualifications to receive the license for which you are applying ***before*** you submit your application and the required fee."[45]

Per Ms. Green, Respondent attested in her application that she met all of the requirements and that her application was truthful and correct.[46] Respondent's application indicated that she obtained her ADN and graduated from Siena on March 6, 2020, which allowed her to take and pass the NCLEX-RN and obtain her Florida license.[47] This information, according to Ms. Green, was considered by the Board in making its decision on the application, as the Board accepted credentials from Siena. She further stated that Respondent never contacted the Board to correct any information in the application.[48]

As for Respondent's renewal application form, Ms. Green testified that it too included the Board's contact information and attestation and truthfulness provisions, in addition to listing the relevant Rules regarding eligibility.[49] Ms. Green stated that this information, along with Respondent's representations regarding her

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[45] Staff Ex. 7 at 121 (emphasis in original).

[46] Staff Ex. 7 at 134. A certification section above the attestation further states: "I understand that providing false or misleading information, as well as omitting pertinent or material information in connection with this application, is grounds for negative licensure consequences, which may include licensure denial or revocation and may subject me to civil or criminal penalties." Staff Ex. 7 at 134.

[47] Staff Ex. 7 at 130-31.

[48] *See* Staff Ex. 7 at 134 ("I will immediately notify the Board if at any time after signing this affidavit I no longer meet the eligibility requirements.").

[49] Staff Ex. 8 at 138, 144-45.

education from Siena, were relied on by the Board when it renewed Respondent's license.

The Board has concerns with applicants seeking to become licensed nurses without the requisite education, Ms. Green said, because the education standards ensure that nurses are competent to work with patients and provide the expected care. Practicing without the minimum education puts the public at risk of harm, and Ms. Green opined that Respondent poses such a risk due to her education.

On cross-examination, Ms. Green was asked about the Rules that are referenced in Respondent's renewal application form. She confirmed that the form does not state that applicants are required to meet Rules 217.2 relating to endorsement, 217.5, or 217.12, which concerns unprofessional conduct.[50] Moreover, Ms. Green conceded that nothing in the renewal application indicated Respondent attested that she met Rule 217.5. Finally, Ms. Green testified that she not aware of any complaints of improper nursing practice by Respondent.

C. TESTIMONY OF RESPONDENT

Respondent is originally from the Democratic Republic of the Congo and came to the United States in 2003. She obtained a nursing degree and license while in Africa, which she said was comparable to an LVN license. In 2009, Respondent received her LVN credential in Texas after attending Texas State College. Ten years later, she attended Siena's ADN program from April 2019 to March 2020 and

[50] *See* Staff Ex. 8 at 138.

obtained her endorsement license. Respondent thereafter enrolled in Aspen University's (Aspen) Bachelor of Science in nursing program in January 2021 and graduated in September of that year.[51]

Although she considered attending Texas schools for her RN degree, Respondent testified that family issues prevented her from being able to start by their commencement dates. Instead, she said she enrolled in Siena online and drove or flew to Florida monthly to attend classes at Siena's campus. She reportedly stayed in Florida for five days at a time and took at least seven classes each semester. Initially, Respondent testified that she attended classes for a year; later, however, she stated that she attended for 11 months, but that she did not attend classes from June-August 2019 when she was unable to make payments.[52] Responded asserted that she received her degree despite missing three months' worth of courses because she caught up on missed classes and clinicals when she returned to the program.

Respondent said she attended classes from 7 a.m. to 5 or 6 p.m. Each day reportedly consisted of multiple classes made up of instruction, exams, clinicals, and discussions, along with breaks. According to Respondent, the subject areas addressed included medical/surgical I/II, mother/maternity/pediatric, mental health, pharmacology, and practice clinicals. Respondent had two main instructors, though she did not know if they were RNs or recall their backgrounds, as well as others who

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[51] Staff Ex. 6; Staff Ex. 13 at 248-49.

[52] Respondent refreshed her memory of her attendance using chronologies that she prepared in response to Staff's Formal Charges. *See* Staff Ex. 6. Respondent also testified, when asked about answers made during a May 2024 deposition, that her testimony regarding her attendance had changed between the deposition and the hearing. She noted, however, that she provided some clarification in the chronology admitted as Staff Ex. 6.

helped with clinicals. She recalled her instructors teaching courses with PowerPoint, using textbooks, and giving quizzes every day after instruction.

Respondent testified to receiving a syllabus while at Siena, though the name at the top was not Siena but "Carleen Health Institute of South Florida" (Carleen).[53] She further testified that Siena followed the six-month schedule in the syllabus but said her program lasted a year.[54] Respondent said she never went to a health care facility to do clinicals on live patients; rather, she performed clinicals every day she was in Florida by practicing on mannequins and other students, usually for three to five hours at a time. Case scenarios and skills were performed on male, female, and pediatric simulation lab mannequins. These mannequins would purportedly notify the students when they incorrectly performed a task or procedure, such as inserting a foley catheter, and stop the procedure. Teachers were also reportedly watching during clinicals and would require students to repeat procedure when they were performed incorrectly. Respondent testified that she performed the simulations correctly every time and never had to repeat them, and that she passed all her quizzes the first time.

When she was not taking courses in Florida, Respondent was living in Texas. She would work on homework and assignments in Texas but never interacted with her instructors during that time. Instead, she reported waiting to ask questions once

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[53] Staff Ex. 13 at 282-85. Respondent identified Dr. A. Grant, who was listed on the Carleen syllabus, as one of her two main instructors at Siena. Staff Ex. 13 at 282.

[54] Staff Ex. 13 at 285.

she back was in Florida, before her next class started. She recalled purchasing around five textbooks for Siena's nursing program.

Respondent passed the NCLEX-RN on November 22, 2020. She said she applied for her endorsement license in Texas just four days later because she was planning to work in Texas.[55] She further testified that she had never planned to work in Florida. When asked why she did not apply for the Texas examination and licensure at the outset, she stated it was her understanding from speaking with Siena's representatives that she had to take the Florida NCLEX and apply for Florida licensure first because she attended a Florida-based school. She reportedly was told that Siena would automatically send her information to the Florida Board. With respect to Respondent's endorsement application, she testified to carefully reading through it before submission.[56]

During her LVN program, Respondent performed clinicals in class as well as with live patients. After being asked how she obtained a comparable education to that required by the Board, when she performed no clinicals on live patients at Siena but had done so during her LVN program, Respondent said she relied on the mannequin clinicals offered at Siena. She stated she was qualified to submit her endorsement application and had satisfied clinical experience requirements because she completed her program's classes and clinicals and received her degree from Siena. In addition, she said she had to rely on Siena's instructors and leaders to provide her with

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[55] Staff Ex. 7 at 131.

[56] Respondent testified that she made the same representations in her renewal application as she did in her endorsement application regarding her attendance at Siena, and that her application was complete and correct.

educational experiences that would qualify her to become a licensed RN. Respondent testified that mannequins should meet the clinical experience requirements because they can respond to mistakes during simulations; however, she admitted that such simulations are controlled simulations, and that real patients could respond or exhibit symptoms in unexpected ways.

After obtaining her license, Respondent first worked as an RN at Parkwood Healthcare, a long-term care/nursing home facility primarily serving a geriatric population. In March 2021, Respondent began working at City Hospital at White Rock, which has since closed.[57] She is currently working as an RN in a medical-surgical unit in Decatur, where she works with patients and administers medication under the supervision of a charge nurse. Respondent testified that she has worked in geriatric and mental health settings through her employment in a nursing home, but she has not worked in a mother/baby setting or pediatric setting. Respondent agreed that it may be unsafe for a nurse who does not possess the proper education and did not meet graduation requirements to practice. She was unaware, however, of any Board requirement that she inquire about Siena's approval status with the Board, Florida Board, or FCIE.

D. TESTIMONY OF DR. HOOPER

Dr. Hooper is the Board's Lead Nursing Consultant for Education and has been employed with the Board for 22 years. She previously worked as a licensed RN in Missouri and Texas in long-term care, residential care, hospitals, and pediatric

[57] Staff Ex. 8 at 141.

hospitals. She has a bachelor's degree in nursing, multiple master's degrees, and a PhD in education with a focus on nursing education. Dr. Hooper worked as faculty and a dean at the university level and is also a certified nursing educator.[58]

Dr. Hooper described the approval process for new ADN programs in Texas. She said the Board provides information sessions to schools that have submitted a letter of intent, and that schools typically take a year to produce a finished proposal. The proposals are then taken to the Board to determine if they are compliant with Rules 215.3 and 215.4. The Board is required under the Act, she stated, to protect the public by regulating nurses and approving nursing education programs that will produce safe and competent practitioners. An explicit goal of the Board's rules regarding professional nursing education for students with associate's degrees, Dr. Hooper noted, was preparing graduates who are competent to practice nursing safely.[59]

According to Dr. Hooper, Siena never initiated an approval request with the Board. Dr. Hooper further testified that, when Respondent submitted her endorsement application, she was required under Rule 217.5(a)(1)[60] to have graduated from an approved program.[61] Dr. Hooper emphasized that a person may not be certified as an approved-program graduate if they graduated from a school outside of Texas that is approved by the state board of nursing for that state, unless

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[58] Dr. Hooper's curriculum vitae was admitted as Staff Exhibit 11.

[59] Rule 215.2(34)(A).

[60] Dr. Hooper testified that she was referring to the August 2020 version of Rule 217.5.

[61] Rule 215.2(34)(A).

it is also approved by the Board.[62] Respondent, therefore, did not graduate from a approved program according to Dr. Hooper.

In addition, Dr. Hooper said that section 301.157(d-4) of the Act required Respondent to have graduated from a program with a substantially equivalent education to a Texas nursing program when she applied for endorsement licensure. A substantially equivalent education, Dr. Hooper opined, includes both didactic content and supervised clinical learning experiences in five designated areas. Specifically, under Rule 215.10(e), clinical learning experiences must include nursing care of persons across the life span, which means from birth to geriatric or near death. She also stated that, pursuant to Rule 215.9(c) regarding program of study requirements, "[i]nstruction shall include . . . faculty-supervised, hands-on patient care clinical learning experiences."[63] And under Rule 215.10(e)(3), clinical courses are limited to 50 percent simulations activities. Consequently, Dr. Hooper testified that a substantially equivalent program would require performing at least 50 percent of the clinical curriculum on live patients.

After hearing Mr. Bowman's testimony, Dr. Hooper opined that the program completed by Respondent did not comport with Siena's program requirements because Respondent's clinicals were performed entirely through simulation. Because Siena's program outline did not permit online education or simulated clinicals,

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[62] *See* Tex. Occ. Code § 301.157(d)(3). This statute also requires that the person "has completed the requirements of the prescribed court of study, including clinical practice, of [the] school or nursing or educational program . . . ." Tex. Occ. Code § 301.157(d)(3).

[63] Rule 215.9(c); *see also* Rule 215.10(d), (g)(4). Under Rule 215.10(g), a faculty member may have no more than 10 students in a clinical group involving direct patient care.

Dr. Hooper testified that Respondent did not complete Siena's program as approved in Florida. Respondent also, according to Dr. Hooper, lacked a substantially equivalent education and was not eligible for licensure by endorsement under Rule 217.5 because she had no faculty-supervised clinicals caring for real patients, let alone in the five requisite areas.

Clinicals with live patients are when the "real learning" occurs, Dr. Hooper stated, as students can apply their knowledge and develop clinical judgment by seeing how things change in real time. Although Dr. Hooper viewed simulations as a place to safely practice skills and procedures and make mistakes before working on actual patients, she stressed that live patients respond to treatments differently and can present rapid changes compared to mannequins. She further stated that subsequent work experience does not factor into or "make up" for a lack of clinical experience in nursing education because clinicals are performed with supervisors that instruct on the proper technique and respond to questions and concerns. Dr. Hooper reported that RN students in Texas completed an average of 500 hours of hands-on, live patient clinicals the year Respondent submitted her endorsement application. [64]

In addition, Dr. Hooper stated that Respondent's didactic education did not appear to be consistent with Texas standards or appropriate to prepare a nurse for practice in Texas. She expressed surprise at seeing the reference to Carleen on Respondent's syllabus and the lack of objectives, reading and clinical assignments, and other descriptions in the documentation. She also expressed concern with

[64] Dr. Hooper testified that the Board looks for that number from programs in other states.

Respondent going to classes in Florida for just a few days each month, stating that the didactics did not appear to be sufficiently connected to the clinical practice.

Regarding Respondent's transcript from Siena, Dr. Hooper said it included no information about when classes were taken or whether credits had been transferred from another school, nor did it indicate the subjects of any clinicals or labs, such as whether they concerned adult or pediatric patients. Respondent's transcripts from her LVN and Aspen programs, by comparison, listed the timeframes and start dates for classes.[65] Dr. Hooper noted that the Aspen program was the "next level of education," or a completion program, following a nursing degree, and provided skills in leadership management and community health. Consequently, she opined that the Aspen degree did not make up for the basic level of nursing lacked by Respondent. Dr. Hooper expressed discomfort with Respondent being employed as a nurse without receiving the proper education and testified that Respondent poses a safety risk to the patients.

On cross-examination, Dr. Hooper was asked about Siena's status in Florida. She testified that the Florida Board had approved Siena's professional associate nursing degree program on December 9, 2013, and that the program was terminated on August 11, 2020.[66] Dr. Hooper confirmed that Siena was also approved by the FCIE to grant degrees through March 2020, when Respondent graduated.

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[65] *See* Staff Ex. 13 at 246-47, 249.

[66] *See* Staff Ex. 1 at 2.

According to Dr. Hooper, the Board followed its regular process when it reviewed Respondent's application; however, it now scrutinizes applications more closely after realizing there is a need to better evaluate education equivalency for schools outside Texas. Currently, upon receiving an application involving an Operation Nightingale school, the Board will review the applicant's transcript and send additional questionnaires to confirm the sufficiency of the application. Dr. Hooper also testified that she was not aware of any complaints against Respondent in her nursing practice beyond those alleged in this case. She further conceded that Respondent passed her jurisprudence exam, NCLEX exam, and ethics exams.

When asked if Respondent could complete an approved program or make up the deficits identified by the Board to keep her license, Dr. Hooper testified that Respondent lacks the basic, clinical underpinning of her education, and that any attempt to fill in the gaps would have to be worked out between the Board and Respondent.

V. ANALYSIS

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

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

Staff argues that Respondent violated Act section 301.451(3) when she practiced nursing under a diploma, license, or record that was obtained unlawfully or fraudulently, or signed or issued unlawfully or under false representation. Respondent, meanwhile, argues that her diploma was lawfully issued as she attended and graduated from an approved Florida nursing program with substantially equivalent education standards. In the alternative, Respondent claims that the Board waived any deficiencies in her education by issuing her endorsement license in 2020. Finally, Respondent alleges that, under the rules cited by Staff, she cannot be disciplined for unlawful or false representations made by others regarding the issuance of her diploma.

Respondent's claim that she cannot be disciplined under this statute is misplaced. Subsection 301.451(3)(A) of the Act 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. To read both subsections as focused on Respondent as the actor would essentially reduce "obtained" and "issued" to the same meaning. Additionally, this ignores the common understanding of the term "issued." It is the school—not the nurse—who issues a diploma. Therefore, one should look to the school's actions to determine whether issuance was unlawful. While the ALJ is sympathetic to the argument that a person should not be punished for the acts of others, Respondent's position fails to recognize that the Board's disciplinary statutes are not solely focused on punishment

for or correction of bad acts, but are also to protect patients and the public health. 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.

Respondent's argument that the Board cannot pursue this enforcement action because it waived any objections regarding her educational credentials by issuing her license is also without merit. The State and its governmental bodies are not subject to equitable defenses when enforcing statutes or rules, even when the activity in question was previously authorized.[67] The rationale for this immunity is to allow governmental entities to enforce their laws to protect the general public.[68] Moreover, "[c]ommon law defenses may not be used to defeat claims brought under a statute that was not designed to be a codification of the common law."[69] Because the Act and the Board's rules are not a codification of the common law, any common law defenses are unavailable in these proceedings. What's more, Respondent's own application forms demonstrate the Board has always taken the position with regards to Respondent's applications that the provision of misleading or false information is grounds for negative licensure consequences, including licensure denial or revocation.[70]

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[67] *See State v. Durham*, 860 S.W.2d 63, 67 (Tex. 1993); *see also Welch v. State ex rel. Long*, 880 S.W.2d 79, 82-83 (Tex. App.—Tyler 1994, writ denied).

[68] *See Shields v. State*, 27 S.W.3d 267, 275 (Tex. App.—Austin, 2000, no pet.); *see also Waller v. Sanchez*, 618 S.W.2d 407, 409 (Tex. App.—Corpus Christi 1981, no writ).

[69] *Weaks v. White*, 479 S.W.3d 432, 437 (Tex. App.—Tyler 2015, pet. denied).

[70] *See, e.g.*, Staff Ex. 7 at 134; Staff Ex. 8 at 145.

With this backdrop in mind, the evidence establishes that Respondent's transcript from Siena, and licenses issued as a result of that transcript, were issued unlawfully and/or under false pretenses. The preponderant evidence demonstrated that Respondent graduated from Siena while it was licensed and approved to provide an ADN nursing program in Florida and could issue diplomas and transcripts to those who completed the course of study pursuant to its program outline. That outline, which had been approved by the FCIE and Florida Board, dictated that students must complete 74 credits hours of specified courses, including 44 hours of "major core courses" and 22 credit hours of clinicals and labs, over six semesters in a 90 week timespan. The outline further prescribed the textbooks and learning resources to be used during instruction, and required that the program consist of at least 50 percent clinical training with 540 to 990 hours of "live" clinicals with patients.

Respondent, meanwhile, testified that she graduated after attending classes for less than 12 weeks in less than a year's time. She also conceded to performing no clinicals on live patients during her program. Moreover, while Respondent's transcript indicates that she completed 74 course credit hours, a comparison of this transcript with the list of Siena's approved courses reveals numerous shortcomings in both theory and clinical courses.[71] For example, Siena's program outline requires that ADN students complete prerequisite or general education courses in "Basic Healthcare Worker HIV/AIDS," "Medical Terminology," and "Speech

[71] A few of the course numbers and descriptions listed on Respondent's transcript match those in Siena's program outline (e.g., BSC200 Anatomy & Physiology I), while many others failed to match the course number and/or course description (e.g., compare NUR301 Pharmacology in Respondent's transcript to NUR304 Pharmacology in Siena's program outline). Several of Respondent's listed credits, moreover, match a general description of a course from Siena's program outline, but not the required number of course credit hours for that course.

Communication," all of which are missing from Respondent's transcript.[72] Respondent's transcript also includes 15 credit hours for courses that are not on Siena's approved course list.[73] Respondent's transcript further represents that she completed 20 hours total of both clinicals and labs—not Siena's mandated 22 hours of clinicals and five hours of labs.[74] And a closer inspection of the transcript's course and credits list reveals that Respondent took just 36 of the 44 "major core courses" credit hours required for graduation.[75] Finally, Respondent admitted to using only about five textbooks during her instruction, despite the approved program dictating that 24 different books would be used. In short, the preponderant evidence overwhelmingly indicated that Respondent did not complete Siena's educational requirements pursuant to its program outline. Siena, therefore, had no authority to

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[72] These three courses constitute eight of the 74 required credit hours. Staff Ex. 1 at 32.

[73] These include College Algebra (three hours), Nutrition (one hour), Legal Aspects of Nursing (two hours), Cultural Nursing (one hour), Health Assessment (two hours), Community Nursing (two hours), an unspecified clinical credit hour that has the same number as that assigned to Community Nursing (NUR307C), and three hours of unspecific clinical coursework that does not match any of the theory course numbers on the transcript or on Siena's program outline (NUR312C). Staff Ex. 13 at 247.

[74] Staff Ex. 1 at 32; Staff Ex. 13 at 247. Siena's transcript lumps clinical and lab credits together, making it impossible to distinguish between the two types of credit. Staff Ex. 13 at 247.

[75] For example, Respondent was required to take five hours of combined clinical and lab credits in Fundamentals of Nursing, with four hours of clinical credits in NUR300C and one hour of lab credit in NUR300L. Staff Ex. 1 at 32. However, her transcript indicates that she received three hours total of combined clinical and lab credits for NUR303L and 303C regarding Fundamentals of Nursing. Staff Ex. 13 at 247. Similarly, she completed four combined hours of clinical and lab credits in Adult Health instead of the requisite seven hours; two combined hours of clinical and lab credits in Maternal and Child Nursing instead of the requisite five hours; four hours of combined clinical and lab credits in advanced Adult Health instead of the requisite six hours; and one hour of clinical Mental Health Nursing instead of the requisite three hours. *Compare* Staff Ex. 1 at 32 *with* Staff Ex. 13 at 247. The transcript includes several additional discrepancies where credits exceeded or were under the required number, including: Math for Healthcare Professionals, Fundamentals in Nursing Concepts I theory; Adult Health I theory; Maternal and Child Nursing theory; Adult Health II theory; Nursing Leadership and Management lab; and Mental Health Nursing theory. *Compare* Staff Ex. 1 at 32 *with* Staff Ex. 13 at 247.

lawfully issue her transcript or diploma, and Respondent cannot be certified as a graduate of that nursing program.[76]

As for Respondent's claim that she completed a substantially equivalent program to a Texas program, the argument fails for several reasons. First, Respondent incorrectly relies on Board rules *as amended* after Respondent applied for and received her license. In November 2020, the plain language of the Board's rules required applicants for licensure by endorsement to have graduated from an approved program; they did not contain any language about a substantially equivalent education. Despite being "approved" in Florida, Siena was not an approved program pursuant to the Board's rules because it was not accredited or approved by the Board. Second, to constitute a substantially equivalent education under both current Rule 217.5(a)(1)(B) and Rule 217.2(a)(4)(B) as in effect in 2020, the applicant's program must have been approved by a state board of nursing.[77] Respondent did not complete Siena's program as it was approved by the Florida Board. Finally, licensure by endorsement required Respondent to have practiced in the endorsing state, but she conceded to never working in Florida. Therefore, the substantially equivalent education provisions are inapplicable in this case, and the ALJ need not reach whether the education Respondent received was substantially equivalent.[78] When

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[76] Tex. Occ. Code § 301.157(d).

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

[78] The ALJ nonetheless notes that the preponderant evidence demonstrated that the program completed by Respondent is not substantially equivalent for, among other reasons, insufficient clinical hours and a lack of clinical hours treating live patients of any kind and in any of the five requisite study areas. 22 Tex. Admin. Code §§ 214.9(c)(3), (e); 217.2(a)(4)(B).

she applied, Respondent did not qualify for licensure by endorsement in Texas, and none of her arguments would make her eligible under the applicable rules.

Respondent relied on her transcript to secure her Florida nursing license and, in turn, her Texas nursing license by endorsement. Since obtaining her Texas license in December 2020, Respondent has practiced as an RN in a long-term care/nursing home facility and in medical/surgical positions. The ALJ finds that Respondent violated Act section 301.451(3)(B) because she was practicing nursing under a transcript and license that were unlawfully issued. For this violation, Respondent may be subject to discipline pursuant to Act section 301.452(b)(1).

B. RESPONDENT DID NOT COMMIT FRAUD OR ENGAGE IN DECEIT

In addition, Staff alleges that Respondent is subject to disciplinary action because she practiced nursing under a diploma, license, or record that was obtained unlawfully or fraudulently in violation of Act section 301.451(3)(A); used a license or diploma "that has been fraudulently purchased, issued, counterfeited, or materially altered" under Act section 301.452(b)(5)); or fraudulently obtained or furnished a nursing diploma, license, renewal license, or record under Act section 301.451(1). Specifically, Staff alleges that Respondent is subject to disciplinary action because she purchased a fraudulent diploma or transcript and knew that her RN degree was not legitimate.

Because neither the Act nor Board rules define fraud, the ALJ applies the common law definition, which requires "a material misrepresentation, which was false, and which was either known to be false when made or was asserted without

knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury."[79] Staff failed to show such knowledge or recklessness on Respondent's part. Rather, the preponderant evidence suggests Respondent sincerely believed that she graduated from a legitimate nursing school as listed in her endorsement and renewal applications.

Staff compared Respondent's experience as an LVN student—at a Texas-approved program that included clinical rotations—to her studies with Siena and argued that she knew or should have known the RN program was not a legitimate program. 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 2019, ten years had passed since she had last been in school. Moreover, she had no reason to think she needed to investigate Siena's legitimacy with the Florida Board or the FCIE, given that Staff's witnesses testified the school was approved by both agencies at that time to operate the program and issue diplomas to graduating students. Respondent reasonably believed that the school's owners were aware of and in compliance with the program's requirements. Her subsequent nursing program with Aspen, moreover, did not require clinical rotations; therefore, Respondent had additional reason to think her Siena education was genuine.

Credible testimony also indicated that Respondent traveled to Florida for several days at a time to attend classes at Siena's campus for the majority of the year.

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

Staff offered no evidence indicating that Respondent lied about her attendance, other than questioning whether Respondent was able to make up three months' worth of instruction that she admittedly missed when she was unable to pay tuition. In addition to her financial commitments to pay for and travel to the course, the evidence demonstrated that Respondent attended classes for 10-11 hours a day to participate in classroom instruction, quizzes and test, labs, and clinicals performed on other students and mannequins. Although Staff pointed to several inconsistencies regarding Siena's program, including the lack of live clinicals, the use of the Carlin syllabus, and the abbreviated course length, these factors did not outweigh the evidence indicating that Respondent believed her program was legitimate.

Had she wanted to fraudulently obtain or "purchase" a diploma, Respondent could have contended her program covered all elements required by the Florida Board and Board; yet she readily acknowledged the classes did not include clinicals with live patients, and that she missed a portion of instruction. In addition, she reasonably said it was worth the travel time and expense to study through Siena because the schedule allowed her to keep working in Texas. 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 she had completed her courses and graduated.

Without sufficient evidence that Respondent was knowing or reckless as to the legitimacy of her education, the ALJ does not find that she sold, fraudulently obtained, or fraudulently furnished her diploma, license, or record under Act

section 301.451(1). Section 301.451(3)(A) of the Act, likewise, does not apply because Respondent did not *obtain* her diploma or license unlawfully or fraudulently. This scenario more closely matches Act section 301.452(b)(5) because Respondent's diploma was arguably fraudulently issued—however, any fraud would have been on the part of Siena, not Respondent, and Staff's Notice of Hearing specifically alleged that Respondent fraudulently *purchased* her diploma. Because Staff failed to prove its allegations that Respondent acted fraudulently, the ALJ does not find a violation of Act section 301.452(b)(5).

C. RESPONDENT ENGAGED IN UNPROFESSIONAL CONDUCT

Staff further asserts that Respondent is subject to disciplinary action under Act section 301.452(b)(1) for engaging in unprofessional conduct in the practice of nursing that was likely to deceive, defraud, or injure a patient or the public. Specifically, Staff alleges that Respondent violated Rule 217.12 regarding unprofessional conduct by 1) engaging in conduct that may endanger a client's life, health, or safety and 2) providing false, deceptive, or misleading information in connection with the practice of nursing.[80]

"False" is not defined in the Act or Board rules. The ALJ, therefore, uses the ordinary meaning of the term,[81] which includes something that is untrue by intent,

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[80] Rule 217.12(4), (6)(H).

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

accident, or mistake.[82] Respondent's license was obtained through her false representation that, in March 2020, she completed Siena's requirements for graduation. She then admittedly practiced nursing under her license, without holding the requisite degree or training. Although Respondent made these representations with no intent to mislead or deceive, as described above, the Board relied on Respondent's false representations when approving her endorsement and renewal applications and would not have issued or renewed the license had it known Respondent lacked the necessary educational credentials. The evidence further demonstrated that the Board and public were likely to be harmed as a result of these representations, as nursing applicants who lack the required education and experience pose a risk of harm to patients and public safety. For these reasons, the ALJ finds Staff met its burden of proving Respondent engaged in unprofessional conduct as alleged and that the Board may impose disciplinary action under section 301.452(b)(1) of the Act.

D. SANCTION ANALYSIS

Because Respondent has been practicing nursing under a diploma, license, or record that was issued unlawfully, in violation of Act section 301.451(3)(B); has been practicing under an endorsement license that she is not qualified to hold, in violation of Act section 301.260(a)(2); and engaged in unprofessional conduct in violation of Rule 217.12, the Board is authorized to impose disciplinary action under Act section 301.452(b)(1). For these violations, Staff seeks revocation of Respondent's

[82] *See False*, Black's Law Dictionary (12th ed. 2024) (defined as "untrue," "deceitful," "lying," and "wrong" or "erroneous"); *see also False*, The American Heritage Dictionary of the English Language, https://www.ahdictionary.com/word/search.html?q=false (last visited Mar. 26, 2024) (defined as "[c]ontrary to fact or truth," "[d]eliberately untrue," "[a]rising from mistaken ideas," and "[i]ntentionally deceptive").

license, which is authorized under Act section 301.453(a)(6). The Matrix, moreover, provides tiers and sanction levels for each violation and directs that the most severe sanction recommended for any of the violations should be considered.

For discipline pursuant to Act section 301.452(b)(1), the Matrix generally contemplates violations of a Board order, stipulation, or probationary restriction, and does not squarely address the circumstances at issue in this case. However, in considering the Matrix, the ALJ finds that Respondent's circumstances[83] most closely match Second-Tier offenses, which include violations that raise a competency issue, including practicing on a delinquent license.[84] A First-Tier offense is not appropriate because the conduct involved the provision of false information relating to substantive educational requirements, rather than an isolated failure to comply with a procedural rule or continuing competency requirements, and a Third-Tier offense does not apply because this case does not involve probationary restrictions.[85]

None of the Matrix's aggravating or mitigating factors apply besides Staff proving multiple violations, though the ALJ notes that all of Respondent's violations stem from the same conduct.[86] As for additional mitigating factors that must be considered under the Board's rules, there is no evidence of any prior disciplinary

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

[84] Rule 213.33(b).

[85] Rule 213.33(b).

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

action against Respondent in any jurisdiction (though she has only practiced nursing in Texas), no evidence of actual patient harm, and insufficient evidence that Respondent was knowingly or willfully untruthful.[87] However, this must be weighed against the multiple aggravating factors proven in this case stemming from Respondent's lack of the requisite educational credentials. The evidence demonstrated that Respondent poses a potential harm to patients, clients, and the public; made false representations (albeit unwittingly) regarding her knowledge, education, experience, credentials, or skills that would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the facts where such reliance could be unsafe; poses a potential threat to public safety; and committed serious violations given her insufficient training and experience.[88]

Based on these aggravating factors, the ALJ finds Respondent's offenses fall within Sanction Level II, especially considering that Respondent cannot correct the violations and will remain out of compliance until she obtains a lawful diploma and meets the eligibility requirements for practicing nursing. Sanction Level II, Second-Tier offenses authorize denial of licensure, suspension, revocation, or voluntary surrender.[89] Given that Respondent's license never would have been issued had the Board known the nature of Respondent's education history, and that she lacked the foundational underpinnings necessary to be licensed in Texas, the ALJ must, unfortunately, recommend that her RN license be revoked. Respondent's LVN license, however, should not be impacted by this proceeding.

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

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

[89] Rule 213.33(b).

Staff requested denial of license renewal as an additional or alternative sanction to revocation. The record, however, did not indicate a renewal application is pending. Accordingly, the ALJ does not recommend denial of license renewal on the facts as presented.

VI. FINDINGS OF FACT

1. Jackie M. Kabadila (Respondent) holds licensed vocational nurse (LVN) License No. 220816, issued by the Texas Board of Nursing (Board) on February 26, 2009.

2. In April 2019, Respondent began studying for an associate's degree in nursing (ADN) at Siena Education Center, LLC, d/b/a Siena College of Health (Siena), based in Lauderhill, Florida.

3. Respondent visited Siena's Florida campus in April and May 2019, and from September 2019-February 2020, for five days each month of in-person classes.

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

5. Respondent received a transcript from Siena that reflected a graduation date of March 6, 2020.

6. Respondent sincerely believed her program at Siena was a legitimate course of study for an ADN.

7. On November 22, 2020, Respondent took and passed the National Council Licensing Examination (NCLEX) for registered nurses (RNs). She then obtained an RN license in Florida, though she did not live or work in Florida.

8. Respondent applied to the Board for a Texas RN license by endorsement on November 26, 2020. On December 4, 2020, the Board issued RN License No. 1020497 to Respondent.

9. In September 2021, Respondent earned a bachelor's degree in nursing from Aspen University. The program did not include live clinical rotations.

10. The Florida Board of Nursing (Florida Board) authorized Siena to operate an ADN program via in-person education in Florida, and required at least 50 percent of the hours to be comprised of clinical instruction performed on live patients. The Florida Board also approved a required course list and list of approved instruction material for Siena's ADN program.

11. The approved length of Siena's ADN program was 90 weeks, over six semesters, with 74 credit hours completed during that time.

12. Respondent did not complete the program of study and educational requirements that the Florida Board approved for Siena's ADN program.

13. Respondent lacked the requisite theory, clinical, and laboratory course credits required to graduate from Siena's ADN program.

14. Siena was not approved by the Board and was not accredited by a national nursing accreditation agency.

15. The Board 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.

16. In 2020, students attending Texas-approved ADN programs completed an average of 500 hours of hands-on, live patient clinicals.

17. Siena's issuance of an ADN transcript to Respondent was not authorized by either the Florida Board or the Board.

18. Respondent provided inaccurate information and answers in her endorsement applications regarding her status as a graduate of Siena's ADN program, albeit unintentionally, and the Board issued her RN license based on that false or misleading information.

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

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

21. After obtaining her RN license in 2020, Respondent has been working as an RN without issue in various healthcare settings. She currently is working as an RN in the medical-surgical department of a facility in Decatur.

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

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

24. Respondent applied with the Board to renew her RN license on February 5, 2022, reiterating in her application that she obtained her ADN from Siena. The Board renewed her license the same day, again relying on representations regarding her educational credentials.

25. Respondent did not commit fraud or engage in deceit in the representations she made to the Board for her RN license application and renewal applications.

26. 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 purported fraudulent nursing diploma scheme. Siena was identified as a school potentially involved in issuing fraudulent diplomas.

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

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

29. On October 29, 2024, Staff sent Respondent its Fourth Amended Notice of Hearing and First Amended Formal Charge. Together, the Notice of Hearing and First Amended Formal Charge 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 Shelly M. Doggett convened the hearing on the merits via Zoom videoconference on November 19, 2024. Assistant Attorney General Tiffani N. Collins represented Staff, and attorney Marc M. Meyer represented Respondent, who was also present. The record closed on February 14, 2025, following the filing of admitted exhibits and written closing statements submitted pursuant to an agreed post-hearing briefing schedule.

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

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

5. The standard of proof in this case is a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *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. Respondent practiced nursing under a diploma, license, or record that was signed or issued unlawfully or under false misrepresentation, in violation of Texas Occupations Code section 301.451(3)(B).

7. Respondent did not successfully complete and cannot be certified as a graduate of an approved program of professional nursing. Tex. Occ. Code § 301.157(d); *see also* 22 Tex. Admin. Code § 217.2(a)(4)(B)(i).

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

9. Respondent has been practicing under an endorsement license she is not qualified to hold, and she is subject to disciplinary action for that conduct. Tex. Occ. Code §§ 301.260(a)(2), .452(b)(1).

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

11. Respondent's provision of false or misleading answers in her endorsement and renewal applications constituted unprofessional conduct in the practice of nursing likely to injure the public. 22 Tex. Admin. Code § 217.12(6)(H).

12. Respondent is subject to discipline for her unprofessional conduct. Tex. Occ. Code § 301.452(b)(1); 22 Tex. Admin. Code § 217.12(4), (6)(H).

13. Staff did not meet its burden of proof to show that Respondent is subject to discipline for fraudulently obtaining or furnishing her diploma, license, or other record. Tex. Occ. Code §§ 301.451(1), .451(3)(A), .452(b)(5).

14. For sanctions imposed pursuant to Texas Occupations Code section 301.452(b)(1), Respondent's violations constitute second-tier, Sanction Level II offenses. 22 Tex. Admin. Code § 213.33(b), (c).

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

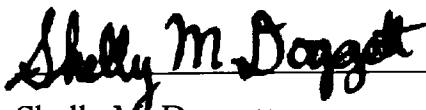
16. The Board may consider the following as mitigating factors: no evidence of any prior disciplinary action against Respondent in any jurisdiction; no evidence of actual patient harm or damage; and Respondent was not knowingly or willfully untruthful. 22 Tex. Admin. Code § 213.33(c)(1), (2), (6), (8).

VIII. RECOMMENDATION

The ALJ recommends that the Board revoke Respondent's RN license.

SIGNED MARCH 31, 2025

ALJ Signature:



Shelly M. Doggett

Presiding Administrative Law Judge

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Associated Case Party: JACKIE MKABADILA

Name	BarNumber	Email	TimestampSubmitted	Status
Marc Meyer		marc@marcmeyerlawfirm.com	3/31/2025 12:57:35 PM	SENT
Sandra Thornton		sandra@marcmeyerlawfirm.com	3/31/2025 12:57:35 PM	SENT

Associated Case Party: Texas Board of Nursing

Name	BarNumber	Email	TimestampSubmitted	Status
Jeff Lutz		jeff.lutz@oag.texas.gov	3/31/2025 12:57:35 PM	SENT
Tiffani Collins		tiffani.collins@oag.texas.gov	3/31/2025 12:57:35 PM	SENT

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 16, 2025

Marc Meyer & Sandra Thornton **VIA EFILE TEXAS**

Tiffani Collins & Jeff Lutz **VIA EFILE TEXAS**

RE: SOAH Docket Number 507-24-06786; *Texas Board of Nursing v. Jackie M. Kabadila*

Dear Parties:

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

CC: Service List

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Associated Case Party: JACKIE MKABADILA

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Marc Meyer		marc@marcmeyerlawfirm.com	4/16/2025 12:05:47 PM	SENT
Sandra Thornton		sandra@marcmeyerlawfirm.com	4/16/2025 12:05:47 PM	SENT

Associated Case Party: Texas Board of Nursing

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Jeff Lutz		jeff.lutz@oag.texas.gov	4/16/2025 12:05:47 PM	SENT
Tiffani Collins		tiffani.collins@oag.texas.gov	4/16/2025 12:05:47 PM	SENT