DOCKET NUMBER 507-24-06905

IN THE MATTER OF	**§**	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	**§**	
NUMBER RN 1034354,	**§**	**OF**
ISSUED TO	**§**	
ELODIE DIBWE KABISA	**§**	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: ELODIE DIBWE KABISA
c/o MARC M. MEYER
2300 WOODFOREST PKWY N., STE. 600
MONTGOMERY, TEXAS 77316

SUSAN RODRIGUEZ
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 in February 2020,[1] receiving an Associate's Degree in Nursing (ADN), passing the National Council Licensing Examination (NCLEX-RN) in March 2021[2] and obtaining initial licensure in Florida. Within days of receiving her Florida Registered Nurse (RN) license, she applied for her Texas RN license representing that she graduated with her ADN from Siena. Texas granted her licensure as a RN on April 8, 2021.[3] Respondent's ADN was issued unlawfully[4] because it did not conform to the Florida Board's approved program outline. Specifically, she attended classes for less than 12 weeks where the program was approved for completion in 90 weeks and completed zero hours of clinical training.[5] Since Siena was not accredited by any national agency, the Board never approved Siena, Respondent never worked as a nurse in Florida, and Respondent did not complete the requirements of the prescribed course of study, the requirements for licensure by endorsement were not met.[6]

Since obtaining her Texas license, Respondent has practiced as a RN in Texas[7] in violation of Texas Occupations Code §301.451(3)(A) and is subject to discipline under Texas Occupations Code §301.452(b)(1).[8] If the Respondent continued to practice under her current credentials, she would continue to violate Tex. Occ. Code § 301.451(3)(B),[9] and by extension, Tex. Occ. Code § 301.452(b)(1). For this reason, the Board agrees with the ALJ's recommended sanction of revocation.

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 1034354, previously issued to ELODIE DIBWE KABISA, 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. 507-24-06905 (February 13, 2025), Exceptions Letter issued March 27, 2025.

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[1] PFD at p. 5.
[2] PFD at p. 6.
[3] *Id.*
[4] PFD at p. 15, Conclusion of Law No. 6.
[5] PFD at p. 21, Conclusion of Law No. 7.
[6] Finding of Fact No. 13, Conclusion of Law No. 8.
[7] Finding of Fact No. 15, Conclusion of Law No. 10.
[8] PFD at p. 32.
[9] PFD at p. 21.

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

February 13, 2025

Tiffani Collins, Office of Attorney General
Attorney for the Texas Board of Nursing

VIA EFILE TEXAS

Marc Meyer
Attorney for Respondent Elodie Dibwe Kabisa

VIA EFILE TEXAS

RE: SOAH Docket Number 507-24-06905.TBN;
Texas Board of Nursing v. Elodie Dibwe Kabisa

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. 507-24-06905 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
v.
ELODIE DIBWE KABISA,
RESPONDENT

PROPOSAL FOR DECISION

Staff (staff) of the Texas Board of Nursing (Board) seeks to revoke the registered nurse (RN) license, and/or deny license renewal, of Elodie Dibwe Kabisa (Respondent), on the bases that Respondent practiced nursing under an unlawfully issued diploma, lacks the requisite degree or education for licensure in Texas, and obtained her diploma and Texas RN license through fraud. The Administrative Law Judge (ALJ) finds that Staff did not establish that Respondent committed fraud but recommends the Board revoke her RN license because she practiced nursing under a diploma that was unlawfully issued and is not qualified to hold a Texas RN license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Matters of notice and jurisdiction were undisputed and are set out in the findings of fact and conclusions of law.

On October 21, 2024, Administrative Law Judge (ALJ) Megan Johnson of the State Office of Administrative Hearings (SOAH) convened the hearing on the merits.[1] Attorney Tiffani Collins represented Staff. Attorney Marc Meyer represented Respondent. The record closed on December 16, 2024, with the filing of the last written closing argument.

II. APPLICABLE LAW

The Board is responsible for licensing and regulating nurses pursuant to the Texas Nursing Practice Act (Act).[2] A person may not practice nursing in Texas without a license issued by the Board.[3]

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.[4] An approved nursing program is a school of nursing or educational program that: (1) is approved by the Board; (2) is accredited by a national nursing

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[1] Administrative Law Judge (ALJ) Megan Johnson presided over the contested case hearing and ALJ Susan Rodriguez reviewed the record and prepared this Proposal for Decision. 1 Tex. Admin. Code § 155.151(b).

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

[3] Code § 301.251(a).

[4] Code § 301.252(a)(2).

accreditation agency determined by the Board to have acceptable standards; or (3) is approved by a state board of nursing of another state and the Board.[5]

A person licensed in another state may qualify for a license by endorsement in Texas by submitting proof of initial licensing by examination and "evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state."[6] By rule,[7] the Board has specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program" and practiced nursing in another state within the four years immediately preceding the request for licensure.[8] If a nurse is applying for licensure by examination in Texas after completing a nursing program in another state, it must have "substantially equivalent education standards" to a Texas-approved nursing program, including "supervised clinical learning experiences" in five areas: medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health.[9]

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[5] Code § 301.157(d).

[6] Code § 301.260(a)(2).

[7] The Board's rules are found at 22 Texas Administrative Code chapters 211 to 228 and are referred to herein as "Board Rule ____." Unless otherwise specified, the citations in this Proposal for Decision are to the substantive laws and rules in effect in March 2021, when Respondent submitted her application for licensure by endorsement to the Board.

[8] Board Rule 217.5(a)(1). In October 2022, Board Rule 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)).

[9] Board Rule 217.2(a)(4)(A)(iii).

A nurse may be subject to disciplinary action for any violation of the Act or a Board Rule.[10] Relevant to this case, a person may not sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record.[11] A person may not practice under a diploma, license, or record that was (a) obtained unlawfully or fraudulently, or (b) signed or issued unlawfully or under false representation.[12] A nurse who has used a nursing license or diploma that was fraudulently purchased or issued is subject to disciplinary action by the Board.[13]

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.[14] The Board has adopted a disciplinary 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.[15] 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

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[10] Code § 301.452(b)(1).

[11] Code § 301.451(1).

[12] Code § 301.451(1), (3). Staff's First Amended Formal Charges also cite to the Board's rule on unprofessional conduct, which is defined to include "[p]roviding information which was false, deceptive, or misleading in connection with the practice of nursing." Board Rule 217.12(6)(H). Code section 301.452(b)(10) specifically authorizes disciplinary action for "unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public." However, Staff's First Amended Formal Charges did not assert Code section 301.452(b)(10) as a basis for disciplining Respondent, and Staff did not address Rule 217.12 at the hearing or in its written closing argument. Any unprofessional conduct claim is therefore considered waived and is not addressed further. *See* 1 Tex. Admin. § 155.425(c).

[13] Code § 301.452(b)(5).

[14] Code § 301.453; Board Rule 213.33(e).

[15] Board Rule 213.33(b).

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.[16]

Staff had the burden of proving its allegations, and Respondent had the burden of proving mitigating factors, if any.[17] The standard of proof in this case is a preponderance of the evidence.[18]

III. EVIDENCE

At the hearing, Staff had eleven exhibits admitted into evidence[19] and presented testimony from Jason Bowman, Danielle Green, Dr. Susan Sportsman, and Respondent. Respondent did not present any documentary evidence but testified on her own behalf.

A. BACKGROUND

1. Respondent's Educational and Licensure History

In February 2020, Respondent received an associate's degree in nursing (ADN) from Siena Education Center, LLC, d/b/a Siena College of Health (Siena), based in Lauderhill, Florida.[20] After passing the National Council Licensure

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[16] Code § 301.4531(b); Board Rule 213.33(b)-(c).

[17] 1 Tex. Admin. Code § 155.427.

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

[19] Staff Exhibits 1-5, 7-9, 12-14. Certain agreed-upon portions of Exhibit 1 were admitted.

[20] Staff Ex. 12.

Examination (NCLEX) in March 2021, Respondent obtained an RN license in Florida.[21] Within days of receiving her Florida RN license, Respondent applied for a Texas RN license by endorsement.[22] The Board issued a Texas RN license to Respondent on April 8, 2021.[23] Respondent's application for renewal of her RN license was granted on November 10, 2021.[24] She filed another application to renew her license on October 6, 2023.[25]

2. Operation Nightingale

In January 2023, the Federal Bureau of Investigation (FBI) and the federal Health and Human Services Commission—Office of the Inspector General announced Operation Nightingale, a law enforcement investigation into a fraudulent nursing diploma scheme involving numerous Florida-based nursing programs. Around 7,600 individuals nationwide were identified as participants in a scheme to obtain fraudulent degrees that allowed them to sit for the NCLEX and, if they passed the NCLEX, to obtain licenses to practice nursing. Siena was identified as one of the educational programs implicated in the scheme, and Respondent was identified as a potential recipient of an illegitimate nursing diploma. When Operation Nightingale was made public in 2023, Staff investigated and issued formal charges against Respondent, seeking to take disciplinary action against her Texas license.

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[21] The NCLEX is a standardized licensing test developed by the National Council of State Boards of Nursing.

[22] Staff Ex. 7.

[23] Staff Ex. 2 at 58. Respondent attended a Board-approved vocational nursing education program and became a licensed vocational nurse (LVN) in 2014. Staff Ex. 2 at 59. Respondent's LVN license is not at issue in this proceeding.

[24] Staff Ex. 2 at 58; *see* Staff Ex. 9.

[25] *See* Staff Ex. 8.

Staff's First Amended Formal Charges allege that (1) Respondent practiced under an unlawfully issued diploma, because Siena issued her diploma even though she did not complete the nursing degree program Siena was authorized by the State of Florida to provide; (2) Respondent obtained her diploma from Siena and, therefore, her Texas RN license, through fraud; and (3) she lacks the requisite education to hold a Texas RN license. According to Staff, these alleged violations warrant the revocation of Respondent's RN license.[26]

B. TESTIMONY OF JASON BOWMAN

Mr. Bowman is an educational policy analyst for the Florida Commission for Independent Education (FCIE). In that role, he assists with licensing non-public post-secondary institutions, including nursing education programs, which are regulated by both the Florida Board of Nursing (Florida Board) and the FCIE.

When applying to FCIE for licensure, an institution must submit a program outline that includes information about its program. Mr. Bowman testified that Siena's program outline described that it would provide seventy-four semester hours over ninety weeks. The program outline provided that, consistent with requirements of the Florida Board, fifty percent of Siena's program would consist of hands-on clinical training. According to Mr. Bowman, half of the clinical training hours could be completed through high-definition simulations, but half were required to be completed in healthcare settings. Mr. Bowman testified that it would be inconsistent with the program FCIE approved for Siena if a person graduated from Siena after

[26] Staff Ex. 4.

completing only twelve months of study, or if a person graduated from Siena having completed zero hours of hands-on clinical training.

According to Mr. Bowman, Siena was placed on probation sometime in 2019 because it failed to obtain accreditation. Siena voluntarily relinquished its license in October 2021.

C. TESTIMONY OF DANIELLE GREEN

Ms. Green, an RN, is also a nurse investigator and the Assistant Director of Enforcement for the Board. She testified that the Board's mission is to protect the health of the citizens of Texas by ensuring that nurses are competent to practice safely.

The Board's application for licensure by endorsement includes an admonishment that the applicant must ensure that they meet the qualifications for licensure in Texas before applying.[27] Those requirements include, among other things, graduation from an approved program with didactic and clinical requirements that are comparable to a Texas education in the five previously discussed areas of nursing study.[28]

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[27] Staff Ex. 7 at 96.

[28] Staff Ex. 7 at 97.

Ms. Green said that Respondent submitted her application for licensure by endorsement to the Board on March 31, 2021.[29] On the application, she indicated that she completed her ADN nursing education program at Siena and graduated on February 28, 2020; that she passed the NCLEX on March 24, 2021; and that she was licensed as an RN in Florida.[30] Respondent attested on her application that she met the qualifications for licensure by endorsement.[31]

Respondent renewed her Texas license in November 2021 and applied for renewal again in October 2023.[32] Both renewal applications, Ms. Green said, include the same attestation that the nurse understood and met the licensure requirements, and on both applications, Respondent certified that she met the requirements for licensure in Texas. A nurse who does not meet all the eligibility requirements for licensure poses a risk of harm to the people of Texas because the Board cannot verify that the nurse's education was sufficient.

According to Ms. Green, the FBI notified the Board about Operation Nightingale in January 2023. Based on the information provided, which implicated Siena and Respondent, the Board opened an investigation and eventually filed formal charges against Respondent.[33]

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[29] Staff Ex. 7.

[30] Staff Ex. 7 at 105.

[31] Staff Ex. 7 at 109.

[32] Staff Exs. 8, 9.

[33] Staff Exs. 3, 4.

D. TESTIMONY OF RESPONDENT

Respondent discussed her background and education. She completed her LVN training at North Central Texas College in Gainesville, Texas. Before applying to Siena in 2018, she called the school and the Florida Board and confirmed that the school was accredited. She understood that she would be required to be on campus once a month for clinical instruction and lectures. She understood the program would last twelve months and would include lectures, simulations, and labs.

Respondent traveled with two other Siena students to Florida from Texas every month to attend classes on campus. Each month they stayed in Florida three to four days and attended lectures and lab simulations and took tests. Classes began around 8:30 a.m. and lasted until 5:00 p.m. Respondent studied fundamentals of nursing, medical-surgical nursing, pharmacology, maternity, pediatrics, and mental health. Respondent had primarily one instructor while at Siena. She was unsure whether any of her instructors had nursing degrees. Respondent had five textbooks and different syllabi for her classes. She completed homework related to the lectures while in Texas.

Respondent testified that she did not have any hands-on experience with live patients during her time at Siena; everything was done in a lab, where students spent three to four hours each day. She said that sometimes the instructors would tell students that next time they visited they would go to a medical facility, but those visits never occurred.

Respondent planned on working in Texas as an RN upon graduating from Siena, but she did not contact the Board to see if Siena was an approved program. Although she never planned on living or working in Florida, Respondent applied for her RN license in Florida first because she attended school there and wanted to apply there, sit for the NCLEX, and then transfer to Texas. Siena staff recommended that as well, she said, and submitted her transcript to the Florida Board for her.

Respondent did not review the Board's rules or requirements for licensure or substantially equivalent education before submitting her endorsement application. She believed that everything she had done at Siena—including simulations, labs, and "other scenarios" they did—counted as the clinical component of her education and qualified her for licensure in Texas. And even though the labs did not include hands-on clinical training with live patients, she thought what she had done would qualify her for licensure in Texas.

By the time she submitted her October 2023 renewal application, Respondent was aware of the allegations against her related to Operation Nightingale. She testified that she consulted a lawyer and did not believe there was an issue with her Siena education as it related to her qualifications for licensure in Texas. She still believes that even though she had done no hands-on clinical training with patients while at Siena, she was "good to go."

Respondent is currently employed in Texas at Kingwood Mental Hospital as an RN charge nurse. She typically has about twelve patients. She has also worked as

an RN at a correctional hospital where she mostly cared for adult patients, and she has cared for geriatric patients. She has never cared for pediatric patients.

Respondent testified that the clinical experiences she had in LVN school did not provide her with all the training she needed to practice as an LVN, and she did not expect that her RN education would be any different. Respondent said that she relied on Siena's leadership to provide her with an educational experience that qualified her to become an RN.

E. TESTIMONY OF DR. SUSAN SPORTSMAN

Dr. Sportsman has been a clinical nurse, nursing educator, and private nursing education consultant for several decades.[34] She also serves as a Board nursing consultant. She is familiar with the Board's rules and Texas requirements for nurse training programs and testified for Staff as an expert in nursing education.

Dr. Sportsman explained that an approved nursing education program must include didactic instruction, labs, and clinical experiences in the study areas of medical-surgical, mental health, obstetrics, pediatrics, and geriatrics. Clinicals take place in various healthcare settings including acute care, long-term care, rehabilitation settings, or community-based settings. A program seeking approval must explain to the Board how instruction will be provided, both clinically and didactically. She testified that the Board's rules about program approval also address the environment in which instruction must be provided, including a one-to-ten

[34] *See* Staff Ex. 14.

faculty to student ratio and required credentials of the faculty. According to Dr. Sportsman, Siena never made a request for approval to the Board and has never been approved to operate in Texas.

Applicants who apply for a Texas license by endorsement are required to have attended an approved program that is substantially equivalent to what is required of programs in Texas. Hands-on clinical care of patients is an absolute requirement of nursing education, she said, because when students are involved in delivery of care it helps them apply what they have learned in a clinical setting and develop clinical judgment. Dr. Sportsman expressed concern about Respondent's lack of clinical training because clinicals give the students experience in evaluating patients. While not every possible clinical problem can be accounted for in a nurse's clinical education, they help the nurse prepare and learn to use and apply their clinical judgement in different situations. On-the-job training is not a substitute for clinical experiences in nursing school, and harm can occur if a nurse is unable to properly assess and take care of patients in real situations. According to Dr. Sportsman, Respondent's education at Siena was not substantially equivalent to a Texas-approved program because of the lack of clinical experience. During the time of Respondent's matriculation at Siena, Texas had just over one hundred Board-approved professional nursing education programs. All would have required hands-on clinicals with actual patients, with narrow exceptions for students who were about to graduate when the COVID-19 pandemic began.

Dr. Sportsman said Respondent did not provide much information about her classroom work at Siena, and she did not submit a transcript or syllabi from her

courses. She expressed concern that Respondent seemed to have one primary instructor at Siena. Faculty should provide instruction and clinical supervision in areas they have experience in, and it seemed unlikely to Dr. Sportsman that one instructor at Siena had sufficient experience in all the areas she for which she was providing instruction.

Dr. Sportsman was also concerned about Respondent's level of knowledge after hearing her testimony. Respondent did not seem to have a full understanding of a nurse's role in a psychiatric facility, she said, and her testimony about pediatric and maternity care indicated that Respondent did not have general knowledge about the full spectrum of nursing practice. Overall, Dr. Sportsman did not think that the education Respondent received from Siena was substantially equivalent to what Texas requires. She said that it is "highly likely" that there is risk of harm to the public if Respondent continues to practice as an RN.

IV. ANALYSIS

The Board seeks to revoke Respondent's RN license alleging that she: was ineligible to apply for a Texas RN license by endorsement because Siena issued her diploma unlawfully, did not received a substantially equivalent education to a Texas-approved nursing program, and obtained her Texas RN license by fraud.

A. PRACTICING UNDER AN UNLAWFULLY ISSUED DIPLOMA

Staff asserts that Respondent has practiced nursing under a diploma that was obtained unlawfully or fraudulently or signed or issued unlawfully under false representation in violation of Code section 301.451(3)(B). Respondent argues that

"unlawfully" is not defined in the Act, and that Siena—not Respondent—acted unlawfully and Respondent should not be punished for the unlawful act of a third party. Somewhat paradoxically, she also asserts that when she graduated, Siena was approved by the FCIE and the Florida Board, so her diploma was lawfully issued.

Staff met its burden of showing that Siena unlawfully issued Respondent's diploma. Mr. Bowman testified that Siena was approved by the FCIE to offer a ninety-week nursing education program at its campus in Florida that included seventy-four semester hours, half of which were to involve hands-on clinical training. Respondent was enrolled in that program, yet Siena issued her a diploma after she took classes for only twelve months and received no hands-on clinical training. Although Siena was authorized to issue diplomas when Respondent graduated, Respondent did not complete the requirements of the program Siena was approved to provide; therefore, Siena acted outside its authority when it issued Respondent a diploma. Additionally, Respondent admitted that she has worked, and is currently working, in Texas as an RN; therefore, she practiced nursing under a diploma that was unlawfully issued.

As to Respondent's argument that the Board cannot discipline Respondent because of the bad acts of a third party like Siena, Respondent is not correctly framing the situation. The ALJ notes that there are other statutes in the Act that provide for disciplinary action to be taken against a nurse for circumstances outside the nurse's control—such as when a licensee is determined to be mentally incompetent or otherwise lack the mental or physical fitness to practice.[35] As with this case, those

[35] *See* Code § 301.452(b)(11), (12).

statutes are intended to help the Board carry out its mission of protecting the public by ensuring that nurses are competent to safely practice. The plain language of the statute at issue here clearly states that a third party's conduct can lead to disciplinary action against a nurse because it prohibits a nurse from practicing under a diploma that has been unlawfully *signed or issued*, and the act of signing or issuing a diploma is not an act carried out by a nurse. And, ultimately, Respondent practiced under an unlawfully issued diploma, so it is her conduct that is the grounds for disciplinary action.

Staff, therefore, has shown by a preponderance of the evidence that Respondent has been practicing nursing under a diploma that was issued unlawfully, in violation of Code section 301.451(3)(B). For this violation, Respondent may be subject to discipline pursuant to Code section 301.452(b)(1).

B. SUBSTANTIAL EQUIVALENCE

As an alternative basis for discipline, Staff argues that Respondent's Texas license was issued unlawfully or under false pretenses because the education she received from Siena was not substantially equivalent to a Texas-approved program, as required to obtain a license by endorsement. Respondent did not argue that her Siena education was substantially equivalent but denied knowing that it was not. Instead, she argued that the Board accepted her education as substantially equivalent when it issued her license in 2021, and in issuing her license waived any further complaints about her education. The parties' emphasis on substantial equivalence is misplaced, however, because that standard would not apply to Respondent as she applied for licensure in Texas by endorsement, not by examination. The avenue for

licensure by equivalency was not in Board Rule 217.5(a)(1) (regarding application by endorsement) at the relevant time and the Board Rule 217.2 equivalency requirements apply to applications for licensure by examination, not applications for licensure by endorsement.

To obtain a Texas license by endorsement, Respondent was required to show the Board that when she received her Florida license, she also possessed "the other qualifications necessary at that time to have been eligible for licensing in this state."[36] Registered nurses must have successfully completed a program of professional nursing approved under Code section 301.157(d).[37] That statute, in turn, provides that a person may be certified as a graduate of a school of nursing or educational program if the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that has been approved by the Board; accredited by a national nursing accreditation agency determined by the Board to have acceptable standards; or approved by *both* a state board of nursing of another state and the Board.[38] Siena met none of these requirements. No party contends that Siena was accredited by any national agency, and the Board has never approved Siena. Additionally, more generally, Respondent could not be certified as a graduate of Siena because she did not complete the requirements of the prescribed course of study.[39]

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[36] Code § 301.260(a)(2).

[37] Code § 301.252(a)(2).

[38] Code § 301.157(d).

[39] Code § 301.157(d).

The Board's rules echo these statutory requirements and impose additional ones. When Respondent applied for her license in 2021, Rule 217.5(a)(1) provided that licensure by endorsement was available only to "[a] nurse who has practiced nursing in another state within the four years immediately preceding," and who could establish her "graduation from an approved nursing program," among other requirements.[40] Respondent acknowledges that she never worked as a nurse in Florida, and has practiced nursing only in Texas. Indeed, she informed the Board of this on her application when she answered "no" to the question, "Have you practiced nursing by using your nursing knowledge, skills, and abilities as a registered (professional/general) nurse in the last four (4) years?"[41] Thus, Respondent was not eligible for licensure by endorsement in March 2021 when she submitted her application, regardless of whether her nursing program at Siena could have been approved under the substantially equivalent standard. Why the Board granted her application for licensure in March 2021 when it had not approved Siena's nursing program, and even though they knew she had not practiced nursing in another state in the four years preceding her application, is unknown.

For these reasons, the "substantially equivalent education" criteria are inapplicable in this case, and the ALJ need not reach whether the education Respondent received was, in fact, substantially equivalent, whether the Board accepted it as substantially equivalent when it issued Respondent's license, or whether the Board waived its right to now complain about the deficiencies in

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[40] Rule 217.5(a)(1). Both parties incorrectly rely on Rule 217.5 *as amended* after Respondent applied for and received her license. In 2021, the plain language of the rule required applicants for licensure by endorsement to have graduated from an approved program; it did not contain any language about a substantially equivalent education.

[41] Staff Ex. 7 at 108.

Respondent's education. When she applied, Respondent did not qualify for licensure by endorsement in Texas, and she has been practicing under an endorsement license that she is not qualified to hold, which is a violation for which she may face disciplinary action.[42]

C. FRAUD IN OBTAINING A LICENSE

Staff alleges that Respondent obtained her Texas RN license by fraud in violation of Code section 301.451(1). In support of this, Staff first points out that Respondent obtained her RN license in Florida just days before submitting her application for licensure by endorsement in Texas, even though she never intended to live or work in Florida. But Staff put on no evidence that applying for licensure by endorsement shortly after receiving an initial license by examination in another jurisdiction demonstrates fraud. In fact, as discussed above, the Board was informed by Respondent in the application process that she had very recently been licensed in Florida and had not worked as a nurse there. Moreover, Respondent attended nursing school in Florida, and Siena sent her transcript to the Florida Board for licensure. According to Respondent, her LVN program in Texas did the same thing so it was not unusual to her that Siena, which operated in Florida, recommended its students apply in Florida and then assisted with that process. And even though Ms. Green and Dr. Sportsman both testified that the Board would give less scrutiny to an endorsement application, there is no evidence that Respondent knew that, or that she intended to avoid scrutiny by filing for a license by endorsement instead of licensure by examination in Texas.

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[42] Code §§ 301.260(a)(2), .452(a)(1).

Staff next argued that Respondent engaged in fraud by making material misrepresentations on her endorsement application when she certified that she met the requirements for licensure in Texas. In Staff's view, Respondent knew she did not obtain a substantially equivalent education when she received zero hours of clinical instruction at Siena. As an initial matter, at the time of her application Respondent could not obtain licensure by showing she received a substantially equivalent education under Board Rule 217.5(a); the rule required graduation from an approved nursing education program and did not discuss substantial equivalence.

The evidence shows that Respondent believed she was qualified to apply for her Texas RN license by endorsement because she graduated from an approved program. At the time Respondent attended and graduated from Siena, its nursing program was approved by FCIE and the Florida Board. Before enrolling, she visited Siena twice and was informed that the nursing program was twelve months long. She checked with the school and the Florida Board to make sure Siena was accredited before enrolling. She traveled from Texas to Florida on a monthly basis for twelve months to attend classes on campus, as required. She received a diploma from Siena, and she learned enough to pass the NCLEX. By arguing that Respondent should have known that she received a diploma from Siena even though she had not completed the program it was approved to provide, or that she should have known her Siena education lacked fundamental training required by both Florida and Texas, would hold her to a higher standard than either of those regulatory agencies was able to meet. And though charged with regulating nursing education programs, the Texas and Florida boards failed to recognize any irregularities in Siena's program until federal authorities pointed them out and scores of nurses had been licensed.

Consequently, the preponderant evidence fails to show that Respondent engaged in fraud by applying for her Texas license by endorsement shortly after being licensed in Florida, or by certifying that she met the requirements for licensure in Texas. Staff has therefore not met its burden of proving that Respondent violated Code section 301.451(1).

D. RECOMMENDATION

The ALJ recommends that the Board revoke Respondent's license. She passed the NCLEX and there is no evidence that she has had any other issues since being licensed as an RN in 2021. But an RN should not practice professional nursing if she has not had a complete nursing education. It is uncontroverted that Respondent did not complete the nursing program Siena was approved to provide and that she completed zero hours of clinical training—a training component Dr. Sportsman described as "incredibly important" to a nurse's education. Respondent seemingly acknowledged that her nursing education at Siena was inadequate when she argued that she is the victim of fraud perpetrated by Siena and she genuinely believed she was enrolled in a legitimate program. In sum, Respondent's diploma was issued by Siena unlawfully, and if she continues practicing as an RN, she will continue to violate Code section 301.451(3)(B).

Whether Respondent was a victim of an unlawful diploma scheme, the Board's duty is to the public. Allowing her to continue practicing as an RN has the potential for harm to the public that the Board's sanction in this case must address. For these reasons, the ALJ recommends revocation of Respondent's RN license.

V. FINDINGS OF FACT

1. Elodie Dibwe Kabisa (Respondent) holds a vocational nurse license (LVN) from the Texas Board of Nursing (Board) that was issued in 2014 and that is not in dispute.

2. Respondent enrolled in at Siena College of Health (Siena) in Florida and began attending classes there in 2019.

3. Siena was approved by the Florida Commission on Independent Education (FCIE) and the Florida Board of Nursing (Florida Board) to provide a nursing education program of seventy-four semester hours over ninety weeks on its campus in Florida. Half of the program was required to involve clinical training.

4. The Board has never approved any nursing education program at Siena.

5. Respondent traveled to Florida to attend classes at Siena's campus three to four days per month.

6. Respondent attended Siena for only twelve months and her education did not include any hands-on clinical training.

7. Respondent did not complete the educational requirements set forth in Siena's program outline and approved by the FCIE and the Florida Board.

8. In February 2020, Siena issued Respondent an associate of science degree in nursing.

9. Siena's issuance of a diploma to Respondent was not authorized by the FCIE or the Florida Board because she did not complete the educational program Siena was authorized to provide. The issuance of the diploma was unlawful.

10. In March 2021, Respondent passed the National Council Licensure Examination and was licensed as a registered nurse (RN) in Florida. Respondent never intended to live or work in Florida.

11. Days later, Respondent applied to the Board for a Texas RN license by endorsement, which was issued on April 8, 2021.

12. Respondent never lived or practiced nursing in Florida. She has practiced nursing only in Texas.

13. Respondent was not eligible for licensure by endorsement because she did not graduate from an approved nursing education program, and she did not practice nursing in another state in the four years immediately preceding her application for licensure by endorsement in Texas.

14. Respondent did not obtain her Texas RN license by fraud.

15. Respondent currently works in Texas as an RN at a psychiatric facility.

16. An RN who is not properly educated and trained poses a risk of harm to patients.

17. In January 2023, federal authorities announced Operation Nightingale, an investigation of a fraudulent nursing diploma scheme involving several nursing programs in Florida. Siena was one of the schools implicated in the investigation, and Respondent was identified as a nurse who may have received an illegitimate or fraudulent diploma from the school.

18. Upon learning of Operation Nightingale, staff of the Board began investigating Respondent and filed formal charges proposing to revoke her RN license.

19. Respondent timely requested a hearing, and the matter was referred to the State Office of Administrative Hearings (SOAH).

20. On September 20, 2024, Staff filed its Third Amended Notice of Hearing and First Amended Formal Charges. Together, those documents 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.

21. On October 21, 2024, SOAH Administrative Law Judge (ALJ) Megan Johnson convened the hearing on the merits. Attorney Tiffani Collins represented Staff. Attorney Marc Meyer represented Respondent. The record closed on

December 16, 2024, with the filing of the last written closing argument. SOAH ALJ Susan Rodriguez reviewed the record and prepared this Proposal for Decision.

VI. 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. 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 proving mitigating factors. 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.).

6. 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).

7. Respondent did not complete and cannot be certified as a graduate of Siena's approved nursing program because she did not complete the school's prescribed course of study, including clinical training. Tex. Occ. Code § 301.157(d); *see* Tex. Occ. Code § 301.252(a)(2).

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

9. Staff did not meet its burden of proof to show that Respondent obtained her RN license by fraud. Tex. Occ. Code § 301.451(1).

10. 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(a)(1).

VII. RECOMMENDATION

The Board should revoke Respondent's Texas RN license.

SIGNED FEBRUARY 13, 2025

Susan Rodriguez
Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 27, 2025

Tiffani Collins, Office of Attorney General
Attorney for the Texas Board of Nursing **VIA EFILE TEXAS**

Marc Meyer
Attorney for Respondent Elodie Dibwe Kabisa **VIA EFILE TEXAS**

RE: SOAH Docket No. 507-24-06905.TBN;
Texas Board of Nursing v. Elodie Dibwe Kabisa

Dear Parties:

The undersigned Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case on February 13, 2025. Elodie Dibwe Kabisa (Respondent) late filed her exceptions on March 3, 2025. The Texas Board of Nursing (Board) filed its reply on March 18, 2025, and did not object to the untimeliness of Respondent's exceptions.

In the PFD, the ALJ recommended that the Board revoke Respondent's registered nurse license because she practiced nursing under a diploma that was unlawfully issued, she did not complete the nursing program Siena was approved to provide, and she was not qualified to be licensed by endorsement.

In her exceptions, Respondent lists Findings of Fact and Conclusions of Law that she maintains are incorrect. However, Respondent's arguments were fully considered and discussed in the PFD and will not be addressed again here.

The PFD is ready for the Board's consideration, and the ALJ recommends that it be adopted as written. Because the State Office of Administrative Hearings

has concluded its involvement in the matter, the case is being returned to the Texas Board of Nursing.

Susan Rodriguez
Presiding Administrative Law Judge

CC: Service List