DOCKET NUMBER 507-24-05505

IN THE MATTER OF	**§**	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	**§**	
NUMBER LVN 1043824,	**§**	**OF**
ISSUED TO	**§**	
JUSTINE NJIMAFEP MBAH	**§**	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: JUSTINE MBAH
7814 COUNTRY SPACE LOOP NORTH
RICHMOND, TEXAS 77469

MICHELLE KALLAS
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025

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

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. The ALJ issued an Exception Letter indicating 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.

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

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

IT IS, THEREFORE, ORDERED THAT Vocational Nurse License Number 1043824, previously issued to JUSTINE NJIMAFEP MBAH, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

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

Entered this 30th day of January, 2025.

TEXAS BOARD OF NURSING

Kristin K. Benton, DNP, RN

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

Attachments: Proposal for Decision; Docket No. 507-24-05505 (October 22, 2024), Exceptions Letter issued November 8, 2024.

[1] Finding of Fact 20.
[2] Finding of Fact 22-24.
[3] Finding of Fact 14.
[4] Finding of Fact 29.
[5] Finding of Fact 28.
[6] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 22, 2024

Austin Havens
Office of the Attorney General

VIA EFILE TEXAS

Justine Mbah
7814 Country Space Loop North
Richmond, Texas 77469

VIA EFILE AND REGULAR MAIL

RE: Docket Number 507-24-05505.TBN
Texas Board of Nursing v. Justine Njimafep Mbah

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. 507-24-05505 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
v.
JUSTINE NJIMAFEP MBAH,
RESPONDENT

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BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
v.
JUSTINE NJIMAFEP MBAH,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke and deny the renewal of the licensed vocational nurse (LVN) credential held by Justine Njimafep Mbah (Respondent) on the basis that she used a fraudulent or unlawful license or diploma and lacks the requisite education or degree. The Administrative Law Judge (ALJ) finds Staff failed to demonstrate fraud on Respondent's part but recommends the Board revoke the license and deny her license renewal because she practiced nursing under an unlawful diploma and does not meet the educational requirements to practice nursing.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

This matter was originally set to be heard on April 30, 2024, with the State Office of Administrative Hearings (SOAH). On that date, Staff appeared for the hearing. Respondent failed to appear for the hearing, and SOAH ALJ Michelle Kallas issued a default dismissal. On May 5, 2024, Respondent timely moved to set aside the default dismissal. Staff opposed Respondent's motion. On May 13, 2024, ALJ Kallas granted Respondent's motion and reset the matter for a hearing on the merits to be heard on August 26, 2024.

ALJ Kallas convened the hearing on the merits via Zoom videoconference on August 26, 2024. Assistant Attorney General Austin Havens represented Staff. Respondent appeared and represented herself at the hearing. The record closed that day, following the filing of admitted exhibits. There are no contested issues of jurisdiction or notice. Therefore, those matters are addressed solely in the Findings of Fact and Conclusions of Law.

II. BACKGROUND

This case stems from an investigation of a fraudulent nursing diploma scheme, known as "Operation Nightingale," conducted by the U.S. Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Department of Health and Human Services Commission Office of Inspector General (HHS-OIG). One of the several schools implicated in this investigation was Sacred Heart International Institute (Sacred Heart).

Respondent enrolled at Burnett International College (Burnett), in Houston, Texas, to receive her nursing education to become an LVN. On completion of her studies in October 2020, she received a diploma and transcript from Sacred Heart. After taking the National Council Licensing Examination (NCLEX), Respondent obtained a practical nurse license in Florida and applied for a Texas LVN license by endorsement. The Board issued a Texas LVN license to Respondent in June 2021. When the results of the Operation Nightingale investigation were made public in 2023, Staff issued Formal Charges against Respondent, seeking discipline based on her involvement with Sacred Heart.

After Respondent applied to renew her license on July 26, 2023, the Board's Executive Director denied Respondent's renewal request,[1] and Respondent timely appealed to SOAH. Staff filed First Amended Formal Charges alleging that: (1) Respondent participated in the fraudulent scheme at the center of Operation Nightingale and obtained her license through fraudulent means; (2) Respondent was prohibited from practicing nursing because her license and diploma were obtained or issued unlawfully; and (3) Respondent cannot be certified as a graduate of a nursing program because she did not graduate from an approved school and did not receive education substantially equivalent to a Texas nursing education. Staff asserts that these grounds give rise to disciplinary action and constitute a grave risk to public safety.

[1] Staff Ex. 7A.

III. APPLICABLE LAW[2]

The Board is responsible for the regulation of nurses pursuant to the Texas Nursing Practice Act (Act).[2] A nurse may not practice nursing without a Board-issued license or under a diploma, license, or record that was (a) obtained unlawfully or fraudulently or (b) signed or issued unlawfully or under false representation.[3]

A. LICENSING REQUIREMENTS

A person licensed in another state may qualify for a license by endorsement in Texas by submitting proof of initial licensing by examination and evidence that the person "possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state."[4] By rule, the Board has specified that licensure by endorsement requires a nurse to have graduated

[2] For purposes of this PFD, citations to licensing requirements will be to the rules in effect at the time of Respondent's applications and licensing (June 2021), 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 _____."

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

[4] Tex. Occ. Code § 301.260(a)(2).

from "an approved nursing education program" and "practiced nursing in another state within the four years immediately preceding" the request for licensure."[5]

An approved nursing education program means a program (1) approved by the Board; (2) accredited by a national nursing accreditation agency the Board has determined has acceptable standards; or (3) approved by the state board of nursing of another state and the Board.[6] To be approved by the Board to operate a Texas-based program, a vocational nursing education program must be licensed by the Texas Workforce Commission or the Texas Higher Education Coordinating Board, as applicable, and the program's proposal must be approved by the Board.[7] If the governing entity of a program has vocational nursing programs in other jurisdictions (including, for example, a Florida-approved school that seeks to operate

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[5] 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 equivalent education standards to a Texas approved nursing program[.]" *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.

[6] Tex. Occ. Code § 301.157(d). 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).

[7] Rule 214.3(a)(1), (2)(B).

a nursing program in Texas), the Texas-based program must still be approved by the Board.[8] A person may not be certified as a graduate of a nursing school or educational program "unless the person has completed the requirements of the prescribed course of study, including clinical practice . . . "[9]

A vocational nursing education program operated in another state may be deemed to have "substantially equivalent education standards" to a Texas-approved program for purposes of applicants for initial licensure by examination:

> (i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical nursing program of study that awards a vocational/practical nursing certificate, diploma, or degree upon completion;
>
> (ii) the program's nursing courses include didactic and supervised clinical learning experiences in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing that teach students to use a systematic approach to clinical decision-making and safe patient care across the life span; and
>
> (iii) the program includes support courses providing a sound foundation for nursing education for the level of preparation.[10]

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[8] *See* Rule 214.3(2)(B)(requiring governing entities with programs in other jurisdictions to include additional information with their program proposal).

[9] Tex. Occ. Code § 301.157(d).

[10] Rule 217.2(a)(4)(B). As of 2022, these requirements were included in Rule 217.5(a)(1)(B) for applicants for licensure by endorsement.

B. DISCIPLINE

A person is subject to disciplinary action by the Board for:

- a violation of the Act, a Board rule or regulation, or an order issued under the Act;
- fraud or deceit in procuring or attempting to procure a license to practice vocational nursing; and
- using a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered.[11]

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.[12] If the facts establish a basis for sanction, the Board's disciplinary matrix (Matrix) and aggravating and mitigating factors must be analyzed.[13] The Matrix categorizes violations into tiers and sanction levels based on the seriousness of the offense and risk of harm to patients or the public.[14]

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

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

[13] Rule 213.33.

[14] Rule 213.33(b).

IV. EVIDENCE

Staff called Sherri Sutton-Johnson of the Florida Board of Nursing (FBON), Anthony Diggs from the Board, and Beverly Skloss, a Board consultant designated as an expert on nursing education standards in Texas. Respondent also testified on her own behalf. The ALJ admitted 18 Staff's exhibits.[15] Respondent offered no exhibits.

A. DOCUMENTARY EVIDENCE

On June 9, 2021, Respondent submitted to the Board an application for LVN licensure by endorsement.[16] Although Respondent attended classes at Burnet, in Houston, Texas, under her education history, Respondent stated that she obtained her vocational/practical nursing education from Sacred Heart in Deerfield Beach, Florida, and that she graduated in October 2020. Respondent's application also represented that she passed the NCLEX after which she was licensed as a practical nurse in Florida.[17] The Board issued Respondent license number 1043824 on June 16, 2024.[18]

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[15] At the previous setting, the ALJ admitted Staff's 15 exhibits. When the matter was rescheduled following the setting aside of the default dismissal, Staff offered 18 exhibits. To avoid confusion with the previously filed exhibits, these new offerings were identified as Staff Ex. 1A, 2A, etc. Staff Exhibits 2A-7A, 8A-9A, 11A-13A, and 15A-17A were admitted without objection. Respondent's objections to Staff Exhibits 1A, 8A, 10A, 14A, and 18A were overruled, and the exhibits were admitted.

[16] Staff Ex. 6A.

[17] Staff Ex. 6A at 0094. A practical nurse in Florida is the equivalent to an LVN in Texas. For ease of reading, this PFD will occasionally use the term LVN in place of practical nurse.

[18] Staff Ex. 2A.

Sacred Heart was approved by the FBON and Florida Commission on Independent Education (FCIE) as an in-person nursing education program; it was not approved for online instruction or online clinical instruction.[19] Sacred Heart voluntarily closed on June 2, 2021, and was not approved by the FBON to admit new students after that date.[20]

According to program outlines approved by the FCIE, Sacred Heart was approved to provide 12-month, "campus" practical nursing diploma programs.[21] The program outlines do not check any boxes indicating that program delivery will occur online, through correspondence, or through other methods. Students were required to complete 1,350 hours of training consisting of 675 theory hours, 20 lab hours, and 655 externship hours. The cost of the program, including tuition and fees, books and supplies, and entrance exam fees, is listed as $10,829.

Burnett was also an approved practical nursing diploma program in Florida.[22] According to its FCIE-approved program outline, Burnett was a 12-month "campus" program not authorized to deliver the course online or through correspondence, and the total program cost $19,230. The program outline required students to complete 1,380 hours, of which 590 hours were theory hours, 115 hours were lab hours, and 675 hours were externship hours.

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[19] Staff Ex. 8A at 0110-11.

[20] Staff Ex. 8A at 0111.

[21] Staff Ex. 8A at 0112-15.

[22] Staff Ex. 15A at 0301-4.

On June 15, 2022, the DOJ and HHS-OIG notified the National Council of the State Boards of Nursing about a multi-state law enforcement action, known as "Operation Nightingale," to apprehend individuals involved in a purported wire fraud scheme to sell fraudulent nursing degree diplomas and transcripts obtained from accredited Florida-based nursing schools.[23] The owner and operator of Sacred Heart, Charles Etienne, prepared an affidavit in which he admitted that he issued transcripts and diplomas to individuals who did not receive instruction from Sacred Heart and did not receive the clinical training required to obtain a practical nursing license.[24] Mr. Etienne provided two lists of individuals: (1) those who he believed successfully completed approved program requirements and (2) those who he believed illegitimately received a diploma, degree, or transcript.[25] Respondent's name appeared on the list of those who, purportedly, illegitimately received a diploma, degree, or transcript.[26] Mr. Etienne was criminally indicted and ultimately pleaded guilty to conspiracy to commit health care fraud and wire fraud.[27]

B. DR. SHERRI SUTTON-JOHNSON

Dr. Sutton-Johnson is the Education Unit Director for the FBON, a role involving oversight of licensing for nursing programs. She has been with the FBON

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[23] Staff Ex. 10A at 0119.

[24] Staff Ex. 11A.

[25] Staff Ex. 10A. Mr. Etienne concluded they were illegitimately issued because the individuals failed to complete the required hours of instruction, including clinical instruction, for graduation from Sacred Heart.

[26] Staff Ex. 10A at 0131.

[27] Staff Ex. 11A at 0139, 0161-71.

for 16 years. She testified that to be approved in Florida, a nursing program must meet requirements in the areas of faculty qualifications, written faculty policies regarding supervision of students, signed clinical affiliation agreements, appropriate clinical sites, and curriculum contents. According to Dr. Sutton-Johnson, the FBON cannot approve a Florida-based nursing program to operate in Texas.

In November 2013, the FBON approved Sacred Heart to offer a practical nursing education program. Dr. Sutton-Johnson testified that the program was approved to provide only in-person instruction, in Florida, with at least 50 percent of the hours to be comprised of clinical instruction.[28] She further testified that the approved curriculum set forth a requirement for 1,350 total hours of instruction; therefore, Sacred Heart students were required to complete 675 clinical instruction hours of which only 50 percent could be through the use of simulation. A course providing zero clinical hours was never approved by the FBON or FCIE.

Dr. Sutton-Johnson also confirmed that Burnett was also approved by the FBON and FCIE to provide a practical nursing education in Florida. According to Dr. Sutton-Johnson, Burnett was never approved to provide a nursing education in Texas. Like Sacred Heart, Burnett was to provide only in-person instruction with at least 50 percent of the hours to be comprised of clinical instruction.[29] To Dr. Sutton-Johnson's knowledge, Sacred Heart and Burnett had no affiliation. She

[28] Staff Ex. 18A.

[29] Staff Ex. 15A.

believed it to be odd that two unaffiliated schools would suddenly transfer students just before they were set to graduate.

C. ANTHONY DIGGS

Mr. Diggs is the Director of Enforcement for the Board. He stated that in January 2023 the Board obtained a list of Texas-licensed individuals potentially involved in the Operation Nightingale scheme.[30] As a general matter, Mr. Diggs explained, the Board relies on other states to confirm that an individual graduated from a program approved in those states and relies on the applicant's representations in an endorsement application. He said Staff's investigation concluded that Respondent did not graduate from an accredited institution and that she provided false or deceptive information on her endorsement application[31] and subsequent license renewal application.[32] On both applications, Respondent claimed that she graduated from Sacred Heart. He expressed concern that Respondent was not properly educated and potentially posed a risk to public safety and patient harm.

Mr. Diggs conceded that at the time Respondent obtained a Texas RN license in September 2020, the Board had no reason for concern about Sacred Heart. He also agreed that there is no record of complaints against Respondent for nursing practice issues.

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[30] Staff Ex. 10A.

[31] Staff Ex. 6A.

[32] Staff Ex. 7A.

D. BEVERLY SKLOSS

Ms. Skloss testified that she is an RN and is a Nursing Consultant for Education to the Board.[33] She noted that, to be qualified for an LVN license in Texas, Respondent had to graduate from an approved Texas program or a program that is substantially equivalent. She testified that at least 50 percent of clinical experience must be hands-on with real patients and in real healthcare settings. She addressed the effect the COVID pandemic had on nursing education in 2020. Ms. Skloss testified that a COVID Impact Waiver (Waiver)[34] was implemented to allow senior level nursing students, who had already completed most of their hands-on clinicals, to complete their education. The intent of the Waiver was never to allow new nursing students avoid their clinical education completely. According to Ms. Skloss, the Waiver only applied to Board approved schools, not to Burnett or Sacred Heart which were not approved to provide nursing education in Texas. In her experience, she had never encountered a nurse who had zero hands-on clinical experience. Based on the information she was provided, she believed that Burnett and Sacred Heart would never have received program approval from the Board.

After reviewing materials relevant to this matter, Ms. Skloss concluded that the nursing education Respondent received was not substantially equivalent to a Texas approved nursing program. She noted that Burnett had one instructor for all subjects with no assigned textbooks. She further noted that most 12-month nursing

[33] Ms. Skloss's *curriculum vitae* is contained in Staff Ex. 12A.

[34] Staff Ex. 17A.

programs required attendance three days a week for an entire day, not three to four hours a day. However, her main concern was Respondent's lack of any in-person clinical training. Based on Board records,[35] Ms. Skloss testified that in 2019, students in Texas-approved programs for an associate's degree in nursing had a minimum of 225 and a maximum of 898 hours of hands-on clinical practice, with an average of 569 in-person clinical hours. In 2020, students had a minimum of 176, a maximum of 1036, and an average of 549 hands-on clinical hours. Ms. Skloss opined that the clinical component is crucial for students to learn judgment, critical thinking, and how to respond quickly under pressure. She testified that a lack of proper training could result in harm to patients, including death. She noted that this was particularly of concern with Respondent since she worked with pediatric patients who are more vulnerable and require more specialized care.

E. RESPONDENT[36]

Respondent moved to the United States in 2016. She was a nurse in her home country for a little over five years. Respondent learned about Burnett's LVN nursing program from a friend who also attended the program. She decided to attend Burnett as she was told it was a flexible one-year program. She enrolled at Burnett for a cost of $16,500. Respondent confirmed that she never visited Florida and did not take any classes at Burnett's Florida campus. According to Respondent, Serge and Ludnie Jean ran the program with Mr. Jean providing all instruction.[37] Respondent admitted

[35] Staff Ex. 16A at 0306.

[36] The following is a summary of Respondent's testimony and sworn deposition statements (Staff Ex. 1).

[37] Respondent also testified that the Jeans operated Jean's NCLEX review.

that she did not check to see if Burnett was Board approved to provide nursing education in Texas. Additionally, she did not inquire whether the FBON had authorized Burnett to provide classes in Texas. She believed Burnett was an approved program because she had friends who completed the program, that were subsequently licensed by the Board and working in the community. In early 2020, before the start of the COVID pandemic, Respondent learned from Mr. Jean and Mr. Etienne that all of Burnett's students were being transferred to Sacred Heart.[38] On learning of the transfer, Respondent did not reach out to the Board or the FBON regarding the transfer.

Respondent described the education she received while at Burnett. According to Respondent, Mr. Jean provided all topic instruction during the program, and Burnett did not use preceptors. The program covered multiple topics, including: anatomy, physiology, pharmacology, pediatrics, medical-surgical, oncology, maternity, geriatrics, and mental health. Respondent could not remember the number of hours of instruction she was required to complete under the program. Classes were held weekly on Mondays, Tuesdays, and Wednesdays, from 9:00 a.m. to 1:00 p.m., with Wednesdays set aside for exams. Respondent was not provided with any required textbooks but indicated that she did have a couple of personal textbooks to use.[39] She further stated that Mr. Jean would send them printed

[38] In her deposition, Petitioner made statements that she learned of the transfer just before her graduation in October 2020. However, there were also statements indicating that she may have learned of the transfer in March 2020. At the hearing, Respondent was adamant that she learned of her transfer to Sacred Heart just before the start of the COVID pandemic.

[39] Respondent provided no information on the subjects these textbooks covered.

materials to review. Respondent admitted that she did not participate in any in-person clinicals for any of the covered topics. When the pandemic hit, all instruction moved online, and Respondent only participated in online simulations. According to Respondent, in-person clinicals were set to begin when the pandemic hit.[40] She did not question the lack of in-person clinicals because of the COVID pandemic. On completing her coursework, Respondent was issued a diploma and transcript from Sacred Heart, even though she never attended classes at Sacred Heart. Again, Respondent did not reach out to any state officials regarding the fact that she attended classes at one school and received a diploma and transcript from another school. According to Respondent she did not think to inquire further because she was notified by school officials of the transfer of students from Burnett to Sacred Heart.

After graduating, Respondent took Jean's NCLEX Review to prepare for the national exam. Around June 4, 2021, Respondent took the NCLEX and passed. At the direction of Mr. Jean, she applied for a license with the FBON. She claimed that she was told to do this because Sacred Heart was in Florida. Once she received the license from the FBON, Respondent took the Board's nursing jurisprudence exam and applied for a Texas license by way of endorsement. Respondent admitted claiming on her endorsement application that she graduated from Sacred Heart. Respondent was granted a Texas license and currently works as a pediatric

[40] *See* Staff Ex. 1A at 0034. According to Respondent, Mr. Jean explained at the start of the program that the students would get "prepared" for a couple of months and then start clinicals in March or April 2020.

home-health nurse. According to Respondent, other than the matter at issue in this hearing, she has no other Board disciplinary actions against her.

Respondent denied being involved in any fraudulent activities. She believed that she was participating in an approved program. According to Respondent, she never would have enrolled in Burnett had she known it was not an approved program. She only learned of the problem with her education in 2023. She acknowledged that an improperly trained nurse could cause harm to patients. However, she felt she had received proper training because she attended and passed all her classes. She also expressed that she wished she had more practical instruction through in-person clinicals.

V. ANALYSIS

Staff alleges that Respondent 1) engaged in fraud and/or deceit in obtaining her nursing degree and in her representations to the Board regarding her nursing education and 2) is practicing nursing under a diploma, license, or record that was unlawfully issued, and did not complete an approved nursing program. The ALJ finds that Staff failed to prove that Respondent committed fraud in obtaining her diploma or license and, therefore, is not subject to sanction on that basis. However, because Burnett, and later Sacred Heart, were not authorized to operate an LVN program and issue a diploma in Texas, Respondent was practicing with an LVN license that was obtained using an unlawfully issued diploma, and Respondent is subject to sanction for that conduct. Additionally, the education Respondent received through Burnett

failed to meet the Board's standards for an LVN program, therefore, she is not qualified to hold a Texas LVN license.

A. RESPONDENT DID NOT COMMIT FRAUD

While Staff did not assert that Respondent committed fraud or deceit in procuring her LVN license,[41] it does allege that Respondent used a nursing license or diploma that has been fraudulently purchased or issued and that Respondent practiced nursing under a diploma or license that was obtained fraudulently.[42] The fraudulent act alleged by Staff appears to be her representation on her endorsement application that she graduated from Sacred Heart in Deerfield Park, Florida, to obtain her Texas LVN license. However, neither the Act nor Board rules appear to provide a definition for fraud. Therefore, turning to the common law is appropriate.[43] In this case, the pertinent element of common law fraud is that a speaker, when making a representation, knew that the representation was false or was reckless in making the representation

[41] Tex. Occ. Code § 301.452(b)(2).

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

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

without knowledge of its truth.[44] The evidence presented by Staff fails to establish that, when Respondent made the representation that she was a graduate of Sacred Heart to obtain her license, that she knew that the representation was false or made recklessly.

Respondent testified that she believed she graduated from an approved nursing program and felt that she was prepared to enter the nursing practice. Respondent enrolled in and attended her classes through the program offered by Burnett, but later received a diploma and transcript from Sacred Heart. In choosing Burnett, Respondent relied upon assertions by a family friend that the Burnett's program was a legitimate program. Respondent had anecdotal evidence that acquaintances had attended the program successfully and were actively working in nursing. These factors led Respondent to not question Burnett's authority to provide a nursing program. During this time, Burnett and Sacred Heart were licensed by FCIE and approved by FBON. In applying to Burnett, Respondent testified that she had to complete an application and paid $16,500 for the program. While she testified that the transfer from Burnett to Sacred Heart raised some questions, Mr. Jean and Mr. Etienne allayed her concerns. The school initially had a physical location with classes meeting three times a week until the COVID pandemic began at which time her classes moved to online instruction. Regarding her hands-on clinical instruction, Respondent testified that they were about to begin the clinicals when the pandemic started. The start of the pandemic led Respondent to not question Burnett's lack of

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

hands-on clinical instruction. While Dr. Skloss takes issue with the quality of Burnett's, and later Sacred Heart's, education, it is not established that a person without experience in nursing education would question that this licensed program was not providing the education for which it was approved.

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

Because her LVN license was not obtained fraudulently, Staff did not demonstrate that its use was a violation under Act sections 301.451(3)(A) and .452(b)(5).

B. RESPONDENT'S DIPLOMA WAS ISSUED UNLAWFULLY

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

the required hours. Respondent completed most of her coursework at Burnett through online instruction, not in person. Further, she had no clinical rotations or instruction through Burnett. Because Respondent did not meet the approved program components, neither Burnett nor Sacred Heart could lawfully issue her a practical nursing diploma. The diploma that Sacred Heart awarded to Respondent was issued under the false representation that Respondent had completed all required elements of the FBON-authorized program.

Staff met its burden to show that Sacred Heart unlawfully issued Respondent's diploma. Pursuant to Act section 301.451(3)(B), Respondent cannot then use that diploma as the credential that entitled her to licensure by endorsement and to practice nursing in Texas. Further, even if the Florida-issued diploma is assumed valid for Texas purposes,[45] the education Respondent received is not substantially equivalent to Texas standards.

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

Licensure by endorsement requires that a nurse show she graduated from an approved nursing education program.[46] Burnett and Sacred Heart were not Board-approved programs.[47] As out-of-state practical nursing programs, they needed

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

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

[47] Tex. Occ. Code § 301.157(d).

to provide an education substantially equivalent to a Texas-approved program in order for Respondent's degree to qualify her for Texas licensure as an LVN.[48] Texas standards require that LVN programs include both didactic and clinical instruction in five subject areas and that some portion of clinical hours be conducted in-person with live patients and faculty supervision.[49] The average Texas LVN program in 2019 included 569 hours of in-person, hands-on clinical experience. In 2020, the average was 549 hours of in-person, hands-on clinical experience. It is undisputed that Respondent did not receive *any* clinical instruction through Burnett or Sacred Heart. Therefore, Respondent did not receive a substantially equivalent education to a Texas program that would qualify her for an LVN license.[50]

D. SANCTION

Violating a provision of the Act is conduct subject to discipline under Act section 301.452(b)(1). The Board may discipline Respondent for practicing under a diploma that was issued unlawfully in violation of the prohibition in Act section 301.451(3)(B). The Matrix for Act section 301.452(b)(1) focuses primarily on violations of a Board order and does not fit this case squarely.[51] However, Respondent's conduct would fall into the second tier because lacking a lawfully issued diploma is a substantive issue, not a procedural or technical matter as covered

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[48] Rule 217.2(a)(4).

[49] Rule 217.2(a)(4)(B). It is undisputed that Texas requires some amount of "supervised clinical learning experiences" in all five subject areas. Rule 217.2(a)(4)(B)(ii).

[50] Tex. Occ. Code § 301.157(d).

[51] Rule 213.33(b) (graphic).

by the first tier.[52] At the same time, she did not violate a substantive probationary restriction or stipulation in a prior Board order, so the third tier is inappropriate. Within the second tier, sanction level I applies where a nurse can be ordered to complete the requirements of a prior Board order; no such order exists. Thus, sanction level II appears to fit better, calling for license denial, suspension, revocation, or voluntary surrender.

In determining the proper sanction, the Board is to apply various aggravating and mitigating factors. Relevant here, the Board should consider that there is no evidence of actual harm to patients, clients, or the public from Respondent's practice, and no actual damages were shown, whether physical, economic, or otherwise.[53] Respondent has worked in the nursing field since her initial licensure in June 2021 without issues and has no prior discipline from the Board or any other regulatory body.[54]

Respondent's conduct is consistent with a sincere belief that she was obtaining a legitimate degree from Burnett, and later Sacred Heart. She completed all the courses that she was told she needed before applying to take the NCLEX or for an LVN license. Her dedication to her studies appears genuine and her efforts indicate

[52] In addition, the second tier references the remediation of a "competency issue raised by the documented violation[,]" which is pertinent to the circumstances here. Rule 213.33(b) (graphic).

[53] Rule 213.33(c)(1), (8).

[54] Rule 213.33(c)(4), (6)-(7).

truthfulness and trustworthiness.[55] Although Sacred Heart unlawfully issued her diploma, Respondent passed the NCLEX, and the record does not show she purposely misrepresented her credentials. To the extent employers and other relied on those credentials, there is no evidence the reliance was unsafe given Respondent's clean disciplinary record.[56] The persons allegedly involved in Operation Nightingale exploited gaps in state regulatory schemes, indicating that system dynamics were a factor.[57]

Despite these points in her favor, Respondent had no clinical rotations with live patients and faculty supervision through Burnett. As a result, her LVN education was inadequate and the potential for harm to patients remains.[58] The Board has specified that violation of a provision of the Act or a Board rule prevents a person from being assumed to have good professional character related to the practice of nursing.[59] Respondent's educational deficiencies call into question whether she is safe to practice as an LVN and can make appropriate clinical judgements affecting her patients.[60] Ultimately, although Respondent appears to have been a victim or at worst an unwitting participant in an unlawful diploma scheme, the Board's duty is to

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[55] Rule 213.33(c)(2).

[56] Rule 213.33(c)(3).

[57] Rule 213.33(c)(12).

[58] Rule 213.33(c)(1).

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

[60] Rule 213.27(c)(1), (3).

the public. Therefore, 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 license be revoked.

Having proven that Respondent is subject to discipline under Act section 301.452(b)(1), the Board is further authorized to deny Respondent's renewal application.[61] Based on the same aggravating and mitigating factors cited above, the ALJ finds that denial is in the Board's interest of regulating nursing activity and protecting clients and the public from harm.

VI. FINDINGS OF FACT

1. Justine Njimafep Mbah (Respondent) received a Licensed Practical Nurse (LPN or PN) credential from the Florida Board of Nursing (FBON).

2. On June 9, 2021, Respondent applied to the Texas Board of Nursing (Board) for Licensed Vocational Nurse (LVN, equivalent to Florida's LPN) licensure by endorsement and was issued LVN license no. 1043824 on June 16, 2021.

3. Respondent's endorsement application stated that she obtained a vocational/practical certificate in nursing from Sacred Heart International Institute (Sacred Heart), located in Deerfield, Florida, and graduated in October 2020.

4. On June 29, 2023, Respondent applied with the Board to renew her license, listing the same education history as in her endorsement application.

[61] Tex. Occ. Code § 301.453(a)(1).

5. From October 2019 to October 2020, Respondent attended a practical/vocational nursing program in Houston, Texas, presented by Burnett International College (Burnett), located in Palm Beach, Florida.

6. Respondent lived in and attended all her classes in Houston, Texas. She never lived in or visited Florida.

7. In early 2020, Respondent learned that all Burnett students were being transferred to Sacred Heart but was unclear as to when the actual transfer occurred.

8. Respondent received a diploma and transcript from Sacred Heart that reflected a graduation date of October 31, 2020.

9. Respondent believed Burnett and Sacred Heart were legitimate nursing education programs and Florida-approved schools that were allowed to provide classes in Texas.

10. Prior to the COVID pandemic, Respondent attended in-person classes Mondays, Tuesday, and Wednesdays for four to five hours a day. Wednesdays were reserved for exams.

11. Beginning in March 2020, Respondent's class schedule remained the same with all of Respondent's classes switching to online only instruction.

12. Burnett had a single instructor and did not provide students with required textbooks.

13. Respondent participated in some online simulations.

14. During her coursework at Burnett, Respondent had no in-person clinical instruction with real patients.

15. Around June 4, 2021, Respondent took and passed the National Council Licensing Examination (NCLEX).

16. At the direction of her course instructor, Respondent applied with the FBON for an LPN license before applying to the Board.

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

18. Respondent did not knowingly or recklessly make false representations in her endorsement and renewal applications, as she believed the representations were true based on conversations with school administrators.

19. Since obtaining her license, Respondent has worked as an LVN in pediatric home-healthcare and has had no complaints or disciplinary actions against her as an LVN.

20. The FBON authorized Burnett and Sacred Heart to operate a practical nurse program only via in-person education in Florida and required at least 50 percent of the hours to be comprised of clinical instruction.

21. Burnett and Sacred Heart were not approved by the Board to offer LVN instruction as a Texas-based program.

22. Burnett and Sacred Heart were not approved by the FBON to offer LVN instruction remotely or to students in Texas.

23. Respondent did not complete the program of study that the FBON approved for Burnett or Sacred Heart.

24. Respondent did not complete a nursing program that was substantially equivalent to the Board's education standards.

25. Texas requires LVN 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.

26. In 2019, Texas-approved LVN programs included a minimum of 225 and a maximum of 898 hours of hands-on clinical practice, with an average of 569 in-person clinical hours.

27. In 2020, Texas-approved LVN programs included a minimum of 176 and a maximum of 1,036 hours of hands-on clinical practice, with an average of 549 in-person clinical hours.

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

29. An LVN who is not properly trained poses a risk of harm to patients.

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

31. Upon learning of Operation Nightingale, the staff (Staff) of the Board, opened an investigation, and proposed to revoke Respondent's LVN license and deny her renewal application.

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

33. On April 17, 2024, Staff sent Respondent its Notice of Hearing and First Amended Formal Charges. Together, the Notice of Hearing and First Amended Formal Charges contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

34. Respondent failed to appear at the hearing scheduled for April 30, 2024, and a default dismissal was issued.

35. Respondent timely filed a motion to set aside the default dismissal. The motion was granted, and the matter was reset for a hearing on the merits on August 26, 2024.

36. SOAH Administrative Law Judge Michelle Kallas convened the hearing on the merits via Zoom videoconference on August 26, 2024. Assistant Attorney

General Austin Havens represented Staff. Respondent appeared and represented herself at the hearing. The record closed on that day, with the filing of admitted exhibits

VII. CONCLUSIONS OF LAW

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

2. SOAH has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.

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

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

5. The standard of proof is by a preponderance of the evidence. *Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

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

7. Respondent practiced nursing under a diploma that was unlawfully issued, in violation of the Nursing Practice Act. Tex. Occ. Code § 301.451(3)(B).

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

9. The Burnett, and later Sacred Heart, programs in Texas were not approved by the Board, accredited by a national nursing accreditation agency the Board

determined to have acceptable standards, or approved by the FBON and accepted by the Board. Tex. Occ. Code § 301.157(d), (d-4).

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

11. The Board may take disciplinary action against Respondent. §§ 301.451(3)(B), .452(b)(1).

VIII. RECOMMENDATION

The ALJ recommends that the Board revoke Respondent's license and deny her renewal application.

Signed October 22, 2024.

ALJ Signature:

Michelle Kallas

Michelle Kallas
Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 8, 2024

Austin Havens
Office of the Attorney General

VIA EFILE TEXAS

Justine Mbah
7814 Country Space Loop North
Richmond, Texas 77469

VIA EFILE AND REGULAR MAIL

RE: Docket Number 507-24-05505.TBN
Texas Board of Nursing v. Justine Njimafep Mbah

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