DOCKET NUMBER 507-24-05478

IN THE MATTER OF	**§**	**BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE	**§**	
NUMBER LVN 1043389,	**§**	**OF**
ISSUED TO	**§**	
FATMATA NABIE	**§**	**ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: ADIAH OREYOMI
1400 BROADFIELD BLVD., STE 200
HOUSTON, TEXAS 77084

SARAH STARNES
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.[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 face-to-face clinical experience with patients and a RN who was not properly trained poses a risk of harm to patients.[3]

The Board agrees with the ALJ's finding that practicing nursing under a diploma that was issued unlawfully.[4] Nursing practice under an unlawfully issued diploma is prohibited by the Nursing Practice Act.[5] If the Respondent continued to practice under her current credentials, she would continue to violate Tex. Occ. Code § 301.451(3)(B), and by extension, Tex. Occ. Code § 301.452(b)(1). For this reason, the Board disagrees with the ALJ's recommended sanction of enforced suspension and imposes revocation.

IT IS, THEREFORE, ORDERED THAT Registered Nurse License Number 1043389, previously issued to FATMATA NABIE, 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. 507-24-05478 (October 24, 2024), Exceptions Letter issued November 12, 2024.

---

[1] Finding of Fact 4.
[2] Finding of Fact 5-6.
[3] Finding of Fact 36.
[4] Conclusion of Law 51.
[5] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 24, 2024

Maya Bailey, Office of Attorney General
for the Texas Board of Nursing

VIA EFILE TEXAS

Adiah Oreyomi
for Respondent Fatmata Nabie

VIA EFILE TEXAS

RE: SOAH Docket Number 507-24-05478.TBN; *Texas Board of Nursing v. Fatmata Nabie*

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. 507-24-05478 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
FATMATA NABIE,
RESPONDENT

TABLE OF CONTENTS

SOAH Docket No. 507-24-05478 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
FATMATA NABIE,
RESPONDENT

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Board) seeks to revoke the licensed vocational nursing (LVN) credential held by Fatmata Nabie (Respondent), contending Respondent has practiced under an unlawfully issued diploma, lacks the requisite education to hold a Texas license, and obtained her license or diploma through fraud. The Administrative Law Judge (ALJ) finds Respondent did not commit fraud. However, she attended an unapproved nursing school that, unbeknownst to her, could not issue a lawful diploma, and is therefore not qualified to hold a Texas LVN license.

Because Respondent cannot meet the legal requirements to hold a license at this time, the Board is authorized to revoke her LVN license. As an alternative, ALJ recommends the Board suspend Respondent's license and enforce the suspension until she completes a remedial clinical practice program or other requirements the Board may impose to address the gaps in her education.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

State Office of Administrative hearings (SOAH) ALJ Sarah Starnes convened a hearing on the merits via Zoom videoconference on July 25, 2024. Assistant Attorney General Maya Bailey represented Staff, and attorney Adiah A. Oreyomi represented Respondent. Following the filing of admitted exhibits and written closing arguments, the record closed on September 27, 2024. Matters of notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law

II. APPLICABLE LAW

Pursuant to the Texas Nursing Practice Act (Act), the Board is responsible for licensing and regulating nurses.[1] A person may not practice nursing in Texas without a Board-issued license.[2]

---

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

[2] Code § 301.251(a).

Education Requirements. Each applicant for a vocational nurse 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.[3] 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 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.[4]

To approve an out-of-state nursing program, the Board must ensure that the other state's standards are substantially equivalent to the Board's standards for approving Texas programs.[5] By rule,[6] the Board has identified the standards that an out-of-state program must meet to be "substantially equivalent" to a Texas program.[7] For LVN programs, an education program may be determined to be substantially equivalent if:

> (i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical nursing program of study that awards a vocational/practical nursing certificate, diploma, or degree upon completion;

---

[3] Code § 301.252(a)(2).

[4] Code § 301.157(d).

[5] Code § 301.157(d-4).

[6] The Board's rules are found at 22 Texas Administrative Code chapters 211 to 228, and are referred to herein as "Rule __." Unless otherwise specified, this proposal for decision cites to the substantive law in effect in June 2021, when Respondent submitted her license application.

[7] Rule 217.2(a)(4)(B). Non-substantive amendments to Rule 217.2, adopted effective October 13, 2022, do not impact the issues in this case. 47 Tex. Reg. 6581.

(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.[8]

Licensure by Endorsement. Nurses licensed in other jurisdictions may be able to receive a reciprocal license in Texas, provided that the Board has determined that the same general degree of fitness required by Texas was also required by the other jurisdiction's licensing agency in its examination.[9] A nurse licensed in another state may qualify for a temporary license by endorsement to practice as an LVN in Texas by submitting certain information to the Board, including "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."[10] The holder of a temporary license by endorsement is entitled to a permanent license if she

---

[8] Rule 217.2(a)(4)(B).

[9] Code § 301.259.

[10] Code § 301.260(a)(2). Staff's First Amended Formal Charges—its live pleading in this case—also alleged violations of "217.5(B) & (C)," an incomplete citation to subsections that do not exist. Staff apparently intended to reference current Rule 217.5(a)(1)(B) and (C), which address what constitutes "substantially equivalent" education for purposes of obtaining temporary or permanent licensure by endorsement. These subsections were not in Rule 217.5 in June 2021, when Respondent applied for her Texas license; they were adopted effective October 7, 2022, and mirrored the language that had been added to Rule 217.2 in 2018. 43 Tex. Reg. 1096; 47 Tex. Reg. 6581. In justifying the October 2022 amendment to Rule 217.5, the Board's comments explained that the amendment was to "clarify" that the language addressing components of a substantially equivalent education applied equally to applicants for initial licensure by examination (addressed in Rule 217.2) and applicants for licensure by endorsement (addressed in Rule 217.5). 47 Tex. Reg. 6582.

verifies her academic and professional credentials and satisfies any other statutory requirements.[11]

Grounds for Disciplinary Action. A person may not "sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record," or practice nursing under a diploma, license, or record that was: (A) obtained unlawfully or fraudulently; or (B) signed or issued unlawfully or under false representation.[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] And, more generally, a nurse may be subject to disciplinary action for any violation of the Act or a Board Rule.[14]

Sanctions. 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.[15] The Board has adopted a matrix (Matrix), which categorizes violations into tiers and sanction levels based on the seriousness of the offense and risk of harm

---

[11] Code § 301.250(b).

[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." Rule 217.12(6)(H). Code § 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 § 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 § 301.452(b)(1).

[15] Code § 301.453; Rule 213.33(e).

to patients or the public, to be used in determining the appropriate disciplinary action.[16] When deciding the degree of sanction to be imposed within the authorized range, the Board shall consider: (1) whether the person is being disciplined for multiple violations or has previously been the subject of disciplinary action by the Board and has previously complied with applicable law; (2) the seriousness of the violation; (3) the threat to public safety; and (4) any other aggravating or mitigating factors in the Matrix and Board rules.[17]

Burden of Proof. Staff has the burden of proving its allegations, and Respondent has the burden of proving any mitigating factors.[18] The standard of proof is a preponderance of the evidence.[19]

III. EVIDENCE

At the hearing, Staff presented testimony from four witnesses: Anthony Diggs, the Board's Director of Enforcement; Sherri Sutton-Johnson, Education Unit Director for the Florida Board of Nursing (Florida Board); Respondent; and Dr. Susan Sportsman, Staff's nursing consultant and expert in this

---

[16] Rule 213.33(b).

[17] Code § 301.4531(b); Rule 213.33(b), (c).

[18] 1 Tex. Admin. Code § 155.427.

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

case. Staff also had six exhibits admitted into evidence.[20] Respondent testified on her own behalf and had eleven exhibits admitted.[21]

A. BACKGROUND

Beginning in January 2020, Respondent enrolled in vocational nursing school at Sacred Heart International Institute, Inc. (Sacred Heart), where she attended in-person classes until COVID restrictions forced instruction to move online in March 2020.[22] Respondent knew Sacred Heart was a Florida-based school, but she attended what she believed was a satellite campus in Houston, where she resided.[23] Upon completing her classes, Respondent took and passed Sacred Heart's exit examination in January 2021, took and passed the NCLEX exam[24] in or about June 2021, then applied for and received a Florida practical nursing license (Florida's equivalent of an LVN license) on June 3, 2021.[25] Within days of receiving the Florida license, Respondent applied for a Texas LVN license by endorsement.[26] Her Texas license was issued on July 22, 2021.[27]

---

[20] Staff Exhibits 1-3, 5, 7, and 9.

[21] Respondent Exhibits 1-3 and 5-12.

[22] Staff. Ex. 7 at 21, 30, 38-39.

[23] Staff Ex. 7 at 32-34, 47.

[24] NCLEX is a standardized licensing test—the National Council Licensure Examination—developed by the National Council of State Boards of Nursing (NCSBN).

[25] Staff Ex. 7 at 42, 49-50; Resp. Ex. 9.

[26] Staff Ex. 3; Staff Ex. 7 at 44-45.

[27] Staff Ex. 2; Resp. Ex. 10.

Subsequently, the Federal Bureau of Investigation (FBI) and Department of Health and Human Services Commission Office of Inspector General (HHS-OIG) announced an investigation of a fraudulent nursing diploma scheme, known as "Operation Nightingale," involving several nursing programs in Florida. Sacred Heart was one of the schools implicated in this investigation. When the results of the Operation Nightingale investigation were made public in 2023, Staff issued Formal Charges against Respondent, seeking discipline against her Texas license for her involvement with the implicated nursing programs.

Staff subsequently filed First Amended Formal Charges alleging that: (1) Respondent's nursing degree was unlawfully or fraudulently issued; (2) Respondent made misrepresentations on her endorsement application about her nursing education; and (3) Respondent is ineligible for a Texas license because she did not graduate from an approved school or receive an education substantially equivalent to a Texas nursing education. According to Staff, these grounds warrant revoking Respondent's Texas license.[28]

B. TESTIMONY OF ANTHONY DIGGS

Mr. Diggs has worked for the Board since 1989, and has been Director of Enforcement since 1995. In that role, he directs the Board's nursing and criminal-

[28] The First Amended Formal Charges also reference the Board's authority to "refuse to renew an LVN license" on the same grounds, urging that "the Board is entitled to not renew [Respondent's] LVN license." Staff Ex. 1 at 0005-06. There is no evidence that Respondent has submitted a renewal application, and her license is not set to expire until November 30, 2024. Resp. Ex. 10. Therefore, any claim involving renewal is not ripe and will not be addressed in this proposal for decision.

justice investigators. He is not involved with reviewing or approving endorsement applications.

In January of 2023, the U.S. Department of Justice notified the Board about Operation Nightingale, the federal investigation into individuals who had been selling fraudulent nursing diplomas or transcripts to would-be nurses. According to Mr. Diggs, federal investigators indicted several individuals who owned or operated the schools involved, and at least one has since been convicted of conspiracy to commit health care fraud. Federal authorities provided the Board with two lists obtained during their investigation: one list that identified Sacred Heart graduates who had completed the required training and instruction and earned legitimate diplomas, and a second list that identified Sacred Heart students who had obtained a diploma or transcript without meeting all of the necessary requirements. Respondent's name was on the second list. Mr. Diggs and the Board did not conduct any investigation into Sacred Heart or the other schools implicated by Operation Nightingale, but they did investigate the Texas nurses who reported attending those schools, including Respondent.

On Respondent's endorsement application, submitted online June 6, 2021, Mr. Diggs pointed out that where she was asked to indicate her "Education Basis for Licensure," Respondent had named Sacred Heart and provided a Deerfield Beach, Florida address for the school.[29] This was a misrepresentation, according to Mr. Diggs, because Respondent had attended school in Houston, Texas, not Florida,

[29] Staff Ex. 3 at 0026.

something the Board would have no way of knowing from her application. Respondent was also untruthful, Mr. Diggs asserted, when she checked a box certifying that she "[met] the qualifications required by Texas law and regulations."[30] Applicants are able to contact the Board to ask questions or correct errors on their applications, Mr. Diggs pointed out, but Respondent never did so.

Mr. Diggs conceded that in completing the online endorsement application, applicants select their nursing school from a drop-down menu on the Board's website, and the school's address then auto-populates in the application. At the hearing, he said he did not know how the Board derived a school's address but agreed that the applicant would not have manually supplied it.[31] Other than selecting the name of her nursing school, the online application did not ask, or provide a place to explain, where the student had physically attended classes, Mr. Diggs acknowledged.

C. TESTIMONY OF DR. SHERRI SUTTON-JOHNSON

Dr. Sutton-Johnson is the Education Unit Director for the Florida Board, a state agency that operates under the auspices of the Florida Department of Health. The Florida Board shares responsibility with another state agency—the Florida Commission of Independent Education (CIE), part of the Florida Department of Education—for regulating private nursing schools in that state. Dr. Sutton-Johnson

---

[30] Staff Ex. 3 at 0030.

[31] On cross-examination, Mr. Diggs was impeached with his testimony from prior SOAH hearings where he had stated that the address would have come from a list provided by the NCSBN; and that it was his understanding that inclusion on the drop-down menu would indicate that the school had been approved by the Board, meaning that the Board had deemed that school to be substantially equivalent to a Texas program.

explained that the CIE regulates which schools can operate in Florida, while her unit at the Florida Board regulates and approves the nursing programs those schools may offer, including prelicensure and continuing education programs.

Sacred Heart was first approved in 2013 to offer an in-person, 12-month practical nursing program in Florida, Dr. Sutton-Johnson testified.[32] The program was supposed to have 1350 total hours, including 655 externship hours.[33] Florida's approval meant only that the in-person program met the education requirements for practical nurses licensed in Florida, as set forth in the Florida Nurse Practice Act. Florida's approval would not extend to other states. At some point, Sacred Heart notified the Florida Board that it would be voluntarily closing in January 2021.

According to Dr. Sutton-Johnson, the Florida Board does not regulate distance education (online) programs, and it has no authority to approve programs outside the state of Florida, such as a school located and operating in Texas, even if that school is affiliated with a school already approved in Florida. The Florida Board typically only authorizes programs that provide in-person instruction. During COVID, the state's Surgeon General issued an Emergency Order that, among other things, authorized prelicensure nursing education programs to "substitute supervised remote live videoconferencing for didactic hours and simulation for all supervised clinical instruction hours required by any statute or rule."[34] That order was signed

---

[32] *See* Staff Ex. 5.

[33] Staff Ex. 5.

[34] Resp. Ex. 6 at RES 846.

on March 21, 2020, and the exemption allowing all-online instruction ended on June 26, 2021, Dr. Sutton-Johnson testified. The Florida Board learned of Operation Nightingale in or about the fall of 2022.

D. TESTIMONY OF RESPONDENT[35]

Respondent moved to New Jersey from Africa at age 13, and has resided in Houston since 2013.[36] She took community college classes at schools in New Jersey, Maryland, and Texas, though she never earned a degree, then began working in healthcare settings, holding positions including dietary aide, home health aide, and patient-care assistant.[37] Her experience in the medical field triggered an interest in nursing. In 2019, a friend of Respondent's had recently enrolled at Sacred Heart in Houston, and that friend had co-workers who had also attended the school.[38] On their recommendation, Respondent decided to explore the program.

Before enrolling, Respondent visited Sacred Heart's Houston campus, on West Little York Road, three separate times to inquire about the school, its curriculum, admissions requirements, and costs.[39] The person she spoke with told her the Houston location was an extension campus of a school approved in Florida,

---

[35] Respondent's deposition was admitted into evidence as Staff Exhibit 7. Except where her deposition is cited, this summary is derived from Respondent's testimony at the hearing.

[36] Staff Ex. 7 at 7.

[37] Staff Ex. 7 at 7-8.

[38] Staff Ex. 7 at 9-10.

[39] Staff Ex. 7 at 15-16.

and she checked the Florida Board's website to confirm Sacred Heart was approved there. She did not also check the Texas Board's website to see if Sacred Heart was approved in this state because she did not know she needed to.[40] The school appeared legitimate, and she had no reason to suspect otherwise, Respondent testified. She applied in November of 2019—the application required recommendation letters, an essay, and an entrance exam—and soon received notification that she'd been accepted.[41] Respondent completed her studies entirely in Houston and has never visited the Florida location. She paid tuition totaling $16,500.00.[42]

Respondent enrolled and began her classes in January 2020. The program began with a computer literacy class, where students were taught to use the computer software the school relied on (an application called "Remind," used to exchange messages with and receive materials from their instructor; and a test-administration program called "Exam Builder"),[43] then they moved on to a medical terminology class. After completing that class, the students proceeded to take classes in anatomy and physiology; fundamentals of nursing; pharmacology and drug administration; medical-surgical nursing (med-surg), a course taught in three parts; nutrition for practical nursing; human growth and development; maternal and newborn nursing; pediatric nursing; geriatric nursing; and personal, family, and community health. For

---

[40] Staff Ex. 7 at 31.

[41] Staff Ex. 7 at 19.

[42] Resp. Ex. 2.

[43] Respondent's evidence included several hundred pages of messages her instructor, Serge Jean, sent her class through Remind between January and April 2020, the first three months of her enrollment. The messages reflect that Mr. Jean sent links to videos, online simulations, and other classroom materials. Resp. Ex. 1. Respondent also provided some of the class materials and quizzes, comprising over 400 pages, that the students used. Resp. Ex. 3.

the most part, classes were taught one at a time, with students taking a final exam before moving on to the next course.

All of Respondent's classes were taught by the same instructor—Serge Jean, who held a master's degree in nursing.[44] Having only one instructor did not seem odd to Respondent, as Mr. Jean seemed very knowledgeable. He would give formal lectures, many of which involved case studies where students were presented with a hypothetical patient and would walk through how to evaluate the patient's symptoms, come up with a diagnosis, and formulate a care plan. These lessons were augmented by demonstrations, computer simulations, and hands-on skills labs.

The skills lab was fashioned as a hospital room, equipped with a hospital bed, an IV pole with tubing and IV bags, a feeding pump, tray table, defibrillator, EKG machine, blood-pressure machine, ventilator, various monitors, a medication cart, a crash cart, and a wound vac. The students practiced their skills on life-like, electronic mannequins—a child and an adult that could each be configured as male or female, and the adult female mannequin could be configured with a pregnant belly. The mannequins had heartbeats, lung sounds, bowel sounds, reflexes, and some ability to convey pain or discomfort. With the mannequins, students could administer IV and oral medications, practice injections, and monitor urine output, among other tasks.

Each course had a corresponding skills lab curriculum. For the pharmacology class, for example, students practiced calculating dosages and administering

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

medications in their labs. In labs for anatomy and physiology, students studied skeletal and muscular systems on mannequins they could manipulate and take apart, and they dissected a goat.[45] In pediatrics labs, they learned to assess young patients, administer their medications, and draw blood. In med-surg labs they learned about wound care and infection control and practiced monitoring vital signs, drawing blood, inserting Foley catheters, changing occupied beds, and managing tracheotomy tubes or gastronomy buttons. In maternity labs they learned to calculate due dates and used mannequins to practice assessing the fundus, monitoring fetal heartbeats with ultrasound, and managing preeclampsia.[46] All of the labs were monitored by Mr. Jean, who checked off the skills as the students mastered them.

In addition to labs, students trained with computer or video simulations. They would be presented with a hypothetical pregnant patient who needed to be assessed and evaluated, and students learned to match symptoms to diagnoses (diabetes, for example, or chronic obstructive pulmonary disease). Sometimes the computer simulations involved patients who were crying or incoherent, or had family members who were interfering with the nurse's work, posing challenges that the mannequins in their labs could not simulate.

When her program began in January 2020, Respondent attended her classes in person for five hours a day, three days a week.[47] At the outset, students were told

---

[45] Staff Ex. 7 at 26-27.

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

[47] Staff Ex. 7 at 21-22.

they would also have to complete clinical training (clinicals) with live patients in different health-care settings, beginning a few weeks into their studies. However, COVID intervened, and beginning in March 2020, students were not able to attend classes in person or do any in-person clinicals.[48] Instead, their lectures moved to Zoom (still attending three days a week), and they practiced their skills solely via video simulations and in small-group sessions in skills labs.[49] Respondent estimated that, in addition to her lectures, she had completed roughly 288 hours of video simulations, 100 hours of case studies, and 296 hours of skills labs during her year of school. She never worked with a live patient at any point during her studies at Sacred Heart.[50]

Respondent completed her courses and passed Sacred Heart's exit exam in January 2021, a year after she began the program. Sacred Heart never provided her with a physical copy of her diploma, nor did she receive a transcript, but she was able access her grades online and confirm that she had graduated. It did not seem unusual to not receive a transcript because Respondent had never received a transcript from most of the community colleges she attended, either.[51]

---

[48] Staff Ex. 7 at 30.

[49] Staff Ex. 7 at 39. Respondent insisted that she had attended clinicals throughout her studies at Sacred Heart, based on her understanding that case studies, simulations, and skills labs were "basically the same" as clinicals, and that both Florida and Texas had approved replacing in-person clinicals with online simulations during COVID lockdowns. Staff Ex. 7 at 30, 36, 56. As discussed below, Texas never completely waived in-person, hands-on clinicals during the pandemic.

[50] Staff Ex. 7 at 38.

[51] Staff Ex. 7 at 41.

After graduating, Respondent took the NCLEX in June 2021 (passing on her first try) and applied for licensure in Florida. She did not intend to move or work in Florida but, because her nursing school was based there, Respondent believed she had to obtain a Florida license before she would be eligible for a license by endorsement in Texas. She did not know she could have applied directly for the Texas license, where she lived and had always intended to work. No one from Sacred Heart helped her sign up for the NCLEX or apply for her Florida or Texas licenses.[52]

When she applied for her Texas license by endorsement, in the space for identifying her school, Respondent selected Sacred Heart from a drop-down menu and the Deerfield, Florida address automatically came up. This did not seem strange, Respondent testified, because she knew Sacred Heart's main campus was in Florida. There was no other Sacred Heart location on the drop-down list, nor was there an option to manually enter a Houston address.[53] She did not construe this auto-populated field as representing that she had physically attended her classes in Florida. Respondent understood that, if she had questions or issues with her application, she was required to reach out to the Board. She also acknowledged that she never did so, but that is because she did not believe the information in her Texas application was inaccurate. Respondent was not aware that Sacred Heart was not accredited by Florida for online schooling, that satellite schools would have to be

[52] Staff Ex. 7 at 48.

[53] Staff Ex. 7 at 47.

approved by the Texas Board, or that Sacred Heart had not been approved as a Texas nursing school.[54]

Respondent's Florida practical nurse license expired in July 2023,[55] and she elected to not renew. While the license was active, Respondent was never contacted by the Florida Board regarding Operation Nightingale or any allegation that her diploma had been illegitimately obtained. She has also never been indicted by the FBI or other law enforcement for her alleged involvement with Operation Nightingale.

Respondent has been working as an LVN since July 2021, when she received her Texas license. She believes she received a good education that prepared her to work competently and confidently as a nurse. She has never had any disciplinary issues with the Florida or Texas Boards, other than this proceeding. She has worked for home health agencies, a rehabilitation facility for mentally impaired patients, and for home and community-based services programs. Currently, Respondent works for Jarvic Healthcare in home health, where she works one-on-one with patients. She has worked with patients of all ages, some of whom have had tracheotomy tubes, ventilators, or gastronomy buttons.

E. TESTIMONY OF DR. SUSAN SPORTSMAN

Dr. Sportsman has been a clinical nurse, nursing educator, and private nursing education consultant for several decades. She also serves as a Board nursing

---

[54] Staff Ex. 7 at 39.

[55] Resp. Ex. 9.

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 a vocational nursing program cannot operate in Texas without the Board's approval, even if that program has been approved by another state's licensing authority. Gaining approval in Texas is "quite an intensive process," she testified, requiring schools to submit their proposed programs for review and revision by Board consultants before the program directors present their proposal to the Board for formal evaluation and approval.[56]

To gain approval, LVN programs must provide both didactic (classroom) and clinical learning components, with clinical learning defined to include "practice in nursing skills and computer laboratories; simulated clinical experiences; faculty supervised hands-on clinical care; clinical conferences; debriefing; and observation experiences."[57] There is no specific number of clinical hours required, but the rules recommend a 1:3 ratio of didactic instruction to clinical learning experiences.[58] Programs must cover five different content areas, Dr. Sportsman explained: med-surg, mental health, geriatrics, pediatrics, and obstetrics.[59] In each area, clinical learning must include "[f]aculty-supervised, hands-on patient care clinical learning experiences in acute and non-acute settings," including "long-term care,

---

[56] *See* Rule 214.3.

[57] Rule 214.9(a), (c)(4).

[58] Rule 214.9(c)(3).

[59] *See* Rule 214.9(e). There is an exception for mental-health, but the content areas otherwise must all include face-to-face clinical experiences with patients, according to Dr. Sportsman.

rehabilitation settings, clinics, respite or day care settings, or other settings where the clinical objectives can be met."[60]

Most LVN programs in Texas last twelve months, according to Dr. Sportsman, so the duration of Sacred Heart's program was not concerning, but she opined that the course progression described by Respondent (where students took one class at a time) was "certainly [] not typical." Further, in Dr. Sportsman's opinion, a nursing program like the one Respondent completed—where clinical experiences were offered entirely through online simulations and included no hands-on, clinical patient experience—would not meet the Board's required learning objectives. Online simulations can be "a wonderful adjunct for teaching," she testified, but they cannot prepare students for live patient situations the way in-person clinicals do. A graduate of such a program would probably not "have the range of experience that they would need" to practice competently as an LVN.

Dr. Sportsman acknowledged that the COVID pandemic had "made things difficult" in 2020, when Respondent was in vocational nursing school. Beginning in March 2020, an Emergency Order was in effect in Florida that authorized nursing programs in that state to substitute "remote live videoconferencing" for all didactic and clinical learning, including "all supervised clinical instruction hours required by any statute or rule."[61] Dr. Sportsman testified that Florida's waiver—which was

[60] Rule 214.9(c)(4).

[61] Resp. Ex. 6 at RES 846.

much broader than what Texas allowed during the same period—would have no impact on nursing schools in this state.

In Texas, the Board's rules typically allow vocational nursing programs to offer "up to 50% simulation activities in each clinical course,"[62] but that requirement was partially suspended effective March 21, 2020, when the governor granted a waiver that allowed "students in their final year of nursing school to meet their clinical objectives by exceeding the 50% limit on simulation experiences."[63] In her testimony, Dr. Sportsman addressed a Board memorandum answering questions about that waiver, including a question that asked:

> 20. I would like clarification about the Governor's rule waiver that allows students in their final year of nursing school to meet their clinical objectives by exceeding the 50% limit on simulation experiences. **Since our full time[,] face-to-face program is 10 months and our blended online VN [vocational nursing] program is 12 months, does this order apply to VN students?**[64]

The memorandum answered, in relevant part:

> This temporary waiver may help senior nursing students enrolled in a program that has ceased direct care clinical learning experiences to

---

[62] *See* Rule 214.10(e)(3).

[63] Staff Ex. 9 at 0181. This exhibit, a Board memorandum titled "MANAGING CLINICAL EXPERIENCES During the COVID-10 Pandemic (While campuses are closed and clinical site rotations are restricted)" was also admitted as Respondent Exhibit 5, except that Respondent's exhibit inadvertently omitted the last page of the memorandum. The full document was admitted as Staff Exhibit 9.

[64] Staff Ex. 9 at 0187 (emphasis added).

> graduate as planned and become a part of the nursing workforce during this unprecedented disaster when employers need "all hands on deck."
>
> Given the temporary waived rules are intended to provide a way for students close to graduation to enter the workforce, **it is unreasonable to interpret that this waiver would apply to the entirety of a nursing program**. It is reasonable to interpret that this waiver refers to students in the last year of a program that is longer than 12 months who have completed coursework and clinical learning experiences preparing them with a good foundation for practice.[65]

Thus, even though Respondent's program was only a year long, it was not reasonable to construe her entire education as being "in the final year of nursing school" for purposes of this waiver, according to Dr. Sportsman. Even during the pandemic, Respondent would still have been required to complete in-person, hands-on clinical learning with patients in order to graduate from a Texas-approved vocational nursing program. Graduating with no face-to-face clinical experience, in Dr. Sportsman's opinion, was "dangerous."

Dr. Sportsman also found it "very unusual" that Mr. Jean was Sacred Heart's only instructor. Even assuming Mr. Jean was competent, Dr. Sportsman said, his students would have benefitted from having additional instructors who could teach

[65] Staff Ex. 9 at 0187 (emphasis added).

from different experiences and perspectives. She thought it was "highly unlikely" that Mr. Jean would be qualified to teach all five required content areas.[66]

Dr. Sportsman said that even though Respondent has been working under an LVN license for three years now, her work experience could not make up for the deficits in her training. Because Respondent never had any hands-on clinical training, she poses a risk of harm to her patients because she lacks the knowledge, skill, and judgment that an approved nursing program would have instilled. Still, Dr. Sportsman acknowledged that she has no reason to dispute that Respondent has been able to demonstrate appropriate clinical judgment and decision-making since she's been working as an LVN.

IV. ANALYSIS

A. PRACTICING NURSING UNDER AN UNLAWFULLY ISSUED DIPLOMA

Staff asserts that Respondent has practiced nursing under a diploma that was issued unlawfully, a violation of Texas Occupations Code (Code) § 301.451(3)(B). Respondent disputes this, arguing that Sacred Heart's nursing program was approved in Florida and had substantially equivalent standards to a Texas-based program, so her diploma should therefore be deemed to have been lawfully issued.

---

[66] A vocational nursing program must have at least one full-time nursing instructor, and must "employ sufficient faculty members with educational preparation and expertise necessary to enable students to meet program rules." Faculty members must hold a current nursing license in Texas and have at least three years of "varied nursing experiences since graduation," but no other specific degrees are required. Rule 214.7(c)-(d), (m).

Staff met its burden to show that Sacred Heart unlawfully issued Respondent's diploma. Sacred Heart was approved by the Florida Board to offer an in-person practical nursing program at a campus in Deerfield, Florida. But Respondent never intended to enroll in the Florida school, nor did she attend any portion of her studies in Florida, even before instruction was moved online during the pandemic.[67] Respondent did not attend the only program that Sacred Heart was authorized by Florida to offer, so cannot be certified as a graduate of that program.

Instead, Respondent enrolled in what was supposed to be an in-person, on-campus vocational nursing program in Houston, Texas, a program that has never been approved by Florida or Texas authorities. According to Dr. Sutton-Johnson's testimony, Florida does not regulate distance-learning programs and could not approve a school operating in this state. Respondent disputes this, arguing that the Florida Board has statutory authority to approve a Texas-based nursing program, as well as authority to approve a Florida-based program with clinical training provided in another state.[68] However, even if Florida law would authorize approval of a satellite campus, there is still no evidence to support Respondent's claim that Florida did, in fact, evaluate and approve an extension campus for Sacred Heart in Texas.[69] The preponderance of the evidence establishes that Sacred Heart's in-person, Florida program was the only one the Florida Board ever approved.

---

[67] Because Respondent was not enrolled in the Florida-approved Sacred Heart program, it is immaterial whether the Florida emergency order would have permitted that program to shift to entirely online learning during the pandemic, as Respondent argues.

[68] Respondent's Closing Brief at 2.

[69] *See* Respondent's Closing Brief at 2-4.

Sacred Heart was also never approved by the Board or any other Texas authority to offer a vocational nursing program in Texas. While Mr. Diggs's testimony suggested that the Texas Board, at some point, may have deemed Sacred Heart's in-person Florida program to be substantially equivalent to a Texas program, there is no evidence that the separate program offered at Sacred Heart's Houston campus was approved in Florida, Texas, or any other state.

Sacred Heart acted outside of its authority when it established a nursing program in Texas without being approved by the Board, and any diplomas issued from that program were unauthorized and unlawful. Therefore, Staff has met its burden of proving that Respondent has been practicing nursing under a diploma that was issued unlawfully, in violation of Code § 301.451(3)(B). For this violation, Respondent may be subject to discipline pursuant to Code § 301.452(b)(1).

B. Obtaining an Endorsement License without Having Received Substantially Equivalent Education

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 Sacred Heart was not substantially equivalent to a Texas-approved program, as required to obtain a license by endorsement.[70] Respondent disputes this, arguing that her nursing education matched the rigorous requirements in Rule 214.9 for Texas vocational nursing programs, and therefore meets the criteria for a substantially equivalent program set out in Rule 217.5(1)(B). The parties' emphasis

[70] Staff's Closing Brief at 8-9.

on substantial equivalence is misplaced, however, because that standard would not apply to Respondent.

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."[71] Both the Code and the Board's rules outline those necessary qualifications. Vocational nurses must have successfully completed a program of vocational nursing approved under Code § 301.157(d).[72] That statute, in turn, provides that a program can certify graduates only if the program 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.[73] Sacred Heart meets none of these criteria. No party contends that Sacred Heart was accredited by any national agency. And, as discussed above, the Board has never approved a Sacred Heart program, and the Florida Board never approved the Houston program that Respondent attended.

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

---

[71] Code § 301.260(a)(2).

[72] Code § 301.252(a)(2).

[73] Code § 301.157(d).

establish her "graduation from an approved nursing program," among other requirements.[74] Respondent acknowledges that she never lived or worked in Florida, and has practiced nursing only in Texas. Thus, Respondent was not eligible for licensure by endorsement, regardless of whether her nursing program could have been approved under the substantially-equivalent standard.

Finally, the criteria for determining whether a nursing education program is substantially equivalent to Texas standards apply only in reference to "[a] vocational nursing education program *operated in another state.*"[75] Respondent attended a Texas nursing program (albeit an unauthorized one), not a program operated in another state, so the rules for evaluating whether another state's program could be substantially equivalent to Texas standards do not apply. And again, to constitute a substantially equivalent education, the applicant's program must still have been approved by a state board of nursing.[76] Respondent did not attend any program as it was approved by any state board of nursing.

For all of 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. When she applied, Respondent did not qualify for licensure by endorsement in Texas, and none of her

---

[74] 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.

[75] Rule 217.2(a)(4)(B) (requiring applicants for initial licensure by examination to show they graduated from a Texas program or a program with substantially equivalent standards).

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

arguments regarding her specific courses, studies, or clinicals would make her eligible under the applicable rules. 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.[77]

C. FRAUD IN PROCURING LICENSE

Staff contends Respondent obtained her nursing license by fraud, in violation of Code § 301.451(1), by making material misrepresentations to the Board in certifying that she had met the requirements to obtain a nursing license in Texas. In Staff's view, Respondent knew she had not received a substantially equivalent education (because she attended most of her didactic courses online, and did zero hours of hands-on clinical instruction); knew she had not attended school in Deerfield Beach, Florida, as she put on her endorsement application; and knew her diploma had been issued unlawfully.[78] As further evidence of her alleged fraud, Staff points out that Respondent obtained a Florida license despite never intending to work in that state, arguing that "[t]he only reason to apply for LVN licensure in Florida before transferring to Texas would be to fly under the radar and avoid [the Board's] vetting of first-time LVN applicants."[79] Respondent counters that the representations in her application were all truthful, but if her Sacred Heart diploma

---

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

[78] Staff's Closing Brief at 9.

[79] Staff's Closing Brief at 9-10.

is deemed unlawfully issued, there is still no reason to believe that Respondent was aware of the school's inadequacies.[80]

Because neither the Act nor Board rules define fraud, the ALJ applies the common law definition, which requires "a material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury."[81] In this case, the pertinent element of common law fraud is that a speaker, when making a representation, knew that the representation was false or was reckless in making the representation without knowledge of its truth.[82] Staff failed to show such knowledge or recklessness on Respondent's part.

While the ALJ has concluded that Sacred Heart was not approved or authorized to offer vocational nursing degrees in this state, the evidence does not show Respondent knew or should have known this. She knew of licensed nurses who had obtained diplomas after attending Sacred Heart's Houston program, visited campus several times to ask questions before enrolling, and paid significant tuition to enroll. She then attended classes for a year and received substantive didactic and clinical instruction in multiple subjects, learned practical skills in a well-equipped lab, and took and passed exams, all overseen by a knowledgeable instructor. To a

---

[80] Respondent's Closing Brief at 13-14.

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

[82] *JPMorgan Chase Bank, N.A. v. Orca Assets G.P.*, 546 S.W.3d 648, 653 (Tex. 2018); *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).

first-time nursing student with no background in parsing the many requirements in the Board's rules, Sacred Heart had all the indicia of a legitimate, authorized nursing program. The fact that much of her schooling and all of her clinicals were online would not necessarily raise suspicion, given the extraordinary circumstances of the COVID pandemic and the suspension of many regulations during that period. In asserting that Respondent should have recognized Sacred Heart's fraud, Staff would hold her to a higher standard than regulators in Florida or Texas were able to meet. Though charged with regulating nursing programs, the Texas and Florida Boards also failed to recognize any irregularities in Sacred Heart's diplomas until federal authorities pointed them out, after scores of nurses had been defrauded.

The ALJ is also not persuaded that Respondent deliberately misrepresented where she attended school on her license application. Respondent understood that her Houston program was a satellite of the Deerfield, Florida location, which was the only Sacred Heart address available to select on the Board's online form. There is no basis for inferring a deliberate, affirmative misrepresentation when the Board's form supplied the address in question and offered no way to supplement or elaborate on the selections on the drop-down menu.

Finally, there is no evidence to support a contention that licensure by endorsement is somehow subject to less scrutiny than initial licenses, let alone that Respondent intended to circumvent such scrutiny. She testified credibly that she did not know there was a path to Texas licensure other than through endorsement of a Florida license. Though legally inaccurate, her belief that she needed a Florida

license first was founded on her knowledge that Sacred Heart was based there and that other graduates had obtained Florida licenses before applying in Texas.

Consequently, the preponderant evidence does not prove that Respondent knowingly or recklessly made a false representation by selecting Sacred Heart in the Education History section of her endorsement application, or in certifying on the application that she met the qualifications for licensure in Texas. Staff has therefore not met its burden to show that Respondent violated Code § 301.451(1) or is subject to discipline under Code § 301.452(b)(2).

D. RECOMMENDED SANCTION

Because Respondent has been practicing nursing under a diploma that was issued unlawfully, in violation of Code § 301.451(3)(B); and has been practicing under an endorsement license that she is not qualified to hold, in violation of Code § 301.260(a)(2), the Board is authorized to impose disciplinary action under Code § 301.452(b)(1). These are the only grounds for discipline asserted in the Formal Charges and supported by the evidence. For these violations, Staff seeks revocation of Respondent's license, which is authorized under Code § 301.453(a)(6). Neither party has addressed the other methods of discipline available under Code § 301.453; any of the factors the Board must consider in determining an appropriate sanction[83]; or the recommended sanctions, aggravating factors, or mitigating factors in the Board's disciplinary Matrix.[84]

---

[83] Rule 213.33(c).

[84] Rule 213.33(b).

For discipline pursuant to Code § 301.452(b)(1), the Matrix generally contemplates that the nurse is being disciplined for failing to comply with a prior Board Order, stipulation, or probationary restriction. An isolated failure to comply with a procedural rule or non-substantive requirement is classified as a first-tier offense; a failure to comply with a substantive requirement, or a violation that poses risk of harm to patients is a second-tier offense; and a failure to comply with substantive probationary restrictions is a third-tier offense. Though none squarely fits here, Respondent's circumstances most closely match the second tier, which applies to violations that raise a competency issue, including practicing on a delinquent license.[85] Under the second tier, Sanction Level I would require the nurse to "complete conditions of original Board order and a fine of $500.00 or more," and may subject the nurse to the "next higher sanction and an extension of the stipulations." Sanction Level II would impose denial, suspension, or revocation of the nurse's license.[86] None of the aggravating or mitigating factors listed squarely apply to the facts of this case.[87]

Turning to the general sanctions factors in the Board's rules, 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,

---

[85] Rule 217.33(b).

[86] Rule 217.33(b).

[87] Aggravating circumstances are "[m]ultiple offenses; continued failure to register for available remedial classes; recurring failure to provide information required by order; patient vulnerability; impairment at the time of incident, [and] failure to cooperate with compliance investigator. Mitigating circumstances are "[u]nforeseen financial or health issues; [and] not practicing nursing during stipulation period." Rule 217.33(b).

economic, or otherwise.[88] Respondent has worked in the nursing field for over three years without issue and has no prior discipline from the Board or any other regulatory body.[89]

Respondent's conduct has been consistent with a sincere belief that she was obtaining a legitimate degree from Sacred Heart. She completed her courses, passed her exit exam, and demonstrated a dedication to her studies that indicates truthfulness and trustworthiness.[90] Although Sacred Heart unlawfully issued her diploma, Respondent passed the NCLEX-RN on her first attempt and the record does not show she purposely misrepresented her credentials to the Board, the Florida Board, or any employers.[91] The persons allegedly involved in Operation Nightingale exploited gaps in state regulatory schemes, indicating that system dynamics were a factor.[92]

Despite these points in Respondent's favor, her nursing program was deficient because she had no in-person clinicals with live patients while attending Sacred Heart. This was perhaps permissible in Florida at the time, but was not allowed in

---

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

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

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

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

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

Texas nursing programs, even during the pandemic.[93] As a result, Respondent's LVN education was inadequate, implicating her fitness to practice and raising the potential for harm to patients.[94] Ultimately, although Respondent appears to have been an unwitting victim of an unlawful diploma scheme perpetrated by others, the Board's duty is to the public. Allowing Respondent to continue practicing as an LVN has the potential for public harm that the Board's sanction must address.

The ALJ notes that the Legislature and the Board have both contemplated that nurses may attend nursing programs that do not quite meet Texas's requirements. Code § 301.157(d-4) requires the Board to enact rules that provide "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." And Rule 217.2(a)(4)(D) provides that an applicant who did not graduate from a Texas program or a program with substantially equivalent education standards may nonetheless become eligible for licensure "if the applicant enrolls in an approved Texas program and completes the necessary educational requirements." These regulations apply to licensure by examination, not endorsement, but nonetheless suggest that Respondent may be afforded an opportunity to cure the deficits in her education and qualify to hold a Texas license.

---

[93] *See* Staff Ex. 9 at 0187 (Addressing pandemic-era waiver that allowed nursing students to exceed the 50% limit on simulated clinical learning experiences during their final year of a nursing education program, Board advised that "it is unreasonable to interpret that this waiver would apply to the entirety of a nursing program," but rather, "this waiver refers to students in the last year of a program that is longer than 12 months who have completed coursework and clinical learning experiences preparing them with a good foundation for practice.").

[94] Rule 213.33(c)(1), (5).

While the revocation Staff seeks is authorized under the Act,[95] the Board is also authorized to impose lesser sanctions, such as suspending a license, requiring a person to participate in education programs, and imposing other conditions for reinstatement.[96] These sanctions are consistent with what the Matrix suggests for a second-tier, Sanction Level II violation under Code § 301.452(a)(1).[97] Accordingly, the ALJ recommends that the Board consider an enforced suspension of Respondent's license as an alternative to revocation. The suspension would stop Respondent from practicing as an LVN until she addresses any educational gaps, but provide an opportunity for Respondent to have her license reinstated upon completion of a remedial clinical practice program or other requirements imposed by the Board. Revocation could be triggered if Respondent fails to timely satisfy those requirements.

V. FINDINGS OF FACT

1. Fatmata Nabie (Respondent) holds licensed vocational nurse (LVN) License No. 104339, issued by the Texas Board of Nursing (Board) on July 22, 2021.

2. In January 2020, Respondent enrolled in a one-year vocational nursing program offered by Sacred Heart Institutional Institute, Inc. (Sacred Heart) in Houston, Texas.

3. One year is a typical duration for LVN schools in Texas.

---

[95] Code § 301.453(a)(6).

[96] Code § 301.453(a)(5), (b)(2), (d).

[97] Rule § 217.33(b).

4. In 2013, the Florida Board of Nursing (Florida Board) approved Sacred Heart to offer an in-person, one-year practical nursing program at a campus in Deerfield, Florida. The program voluntarily closed in 2021.

5. The Florida Board approves only in-person programs in that state. It does not approve programs located outside that state or any distance education programs. The Florida Board did not approve any Sacred Heart vocational nursing program in Texas.

6. The Texas Board has never approved any Sacred Heart vocational nursing program.

7. Respondent never intended to enroll in an in-person Florida program, nor did she attend any portion of her studies in Florida.

8. At all times relevant to this case, Respondent has lived and worked in Houston. She never intended to move to or practice nursing in Florida.

9. Before enrolling, Respondent visited Sacred Heart's Houston location several times and confirmed that Sacred Heart had a program approved in Florida. She was unaware that neither Florida nor Texas authorities had approved a satellite location in Houston, or that separate approval of the Houston program was required.

10. Respondent believed that Sacred Heart was authorized to provide an LVN education program at the Houston campus.

11. Respondent paid $16,500 in tuition to attend Sacred Heart.

12. For the first two months of her nursing program, Respondent attended in-person classes in Houston, until COVID restrictions forced her program to move entirely online in March 2020. She attended classes five hours a day, three days a week.

13. Respondent's curriculum included classes in computer literacy; medical terminology; anatomy and physiology; fundamentals of nursing; pharmacology and drug administration; medical-surgical nursing, a class taught in three parts; nutrition for practical nursing; human growth and

development; maternal and newborn nursing; pediatric nursing; geriatric nursing; and personal, family, and community health.

14. Respondent's courses generally matched the subjects that are required to be covered in Board-approved Texas LVN programs.

15. All of Respondent's classes were taught by the same instructor—Serge Jean, a knowledgeable instructor who holds a master's degree in nursing.

16. The Board does not require LVN schools to have more than one instructor.

17. Mr. Jean gave formal lectures, augmented by demonstrations, computer simulations, and a hands-on skills labs for each course.

18. Sacred Heart's Houston skills lab was fashioned as a hospital room, equipped with a hospital bed, an IV pole with tubing and IV bags, a feeding pump, tray table, defibrillator, EKG machine, blood-pressure machine, ventilator, various monitors, a medication cart, a crash cart, and a wound vac.

19. Sacred Heart's Houston students practiced their skills on life-like, electronic mannequins—a child and an adult that could each be configured as male or female, and the adult female mannequin could be configured with a pregnant belly. The mannequins had heartbeats, lung sounds, bowel sounds, reflexes, and some ability to convey pain or discomfort.

20. When the program started, Sacred Heart students were told they would have to complete clinical training (clinicals) with live patients in different health-care settings, beginning a few weeks into their studies.

21. Due to the COVID pandemic, Respondent's clinical training was conducted entirely online or in small-group sessions in the skills lab. She never worked with a live patient at any point during her studies at Sacred Heart.

22. The Board does not approve LVN programs that do not include any in-person, hands-on clinicals. Even during the pandemic, LVN programs lasting one year or less were required to include in-person clinicals.

23. To a first-time nursing student with no legal background, Sacred Heart had all the indicia of a legitimate, authorized nursing program. Respondent had no basis to suspect that the program was unauthorized or fraudulent.

24. Upon completing her classes, Respondent took and passed Sacred Heart's exit examination in January 2021.

25. In or about January 2021, Respondent took and passed the National Council Licensure Examination (NCLEX) on her first attempt.

26. Respondent received a Licensed Practical Nurse (LPN, equivalent to LVN) credential from the Florida Board on June 3, 2021. Several days later, she applied for her Texas LVN license by endorsement.

27. Because she understood her nursing school was based there, Respondent thought she had to obtain a Florida license before she would be eligible for a license in Texas. She did not know she could have applied directly for licensure by examination, instead of applying by endorsement from Florida.

28. There is no evidence that Respondent applied for licensure by endorsement in order to avoid the Board's scrutiny.

29. Respondent's endorsement application was submitted on June 6, 2021, using the Board's online form. In a field where the applicant was asked to indicate her "Education Basis for Licensure," Respondent selected Sacred Heart from a drop-down menu. This selection auto-populated a Deerfield Beach, Florida address for the school on the form.

30. The Board's online application did not offer any way for Applicant to provide a different address for her school, or to elaborate on whether she had attended classes in a location other than Florida.

31. In submitting the online application, Respondent certified that she met the qualifications required by Texas law and regulations for obtaining a license by endorsement. She believed this was true.

32. In or about January 2023, federal authorities announced an investigation of a fraudulent nursing diploma scheme, known as "Operation Nightingale,"

involving several nursing programs in Florida. Sacred Heart was one of the schools implicated in this investigation, and Respondent was identified as a nurse who may have obtained a diploma or transcript without meeting all of the necessary requirements.

33. The Texas and Florida Boards failed to recognize any irregularities in Sacred Heart's diplomas until federal authorities pointed them out, after scores of nurses had been defrauded.

34. Respondent has been working as an LVN without issue in various healthcare settings since June 2021. She currently works in home health.

35. Respondent has never had any disciplinary issues with the Florida or Texas Boards, other than this proceeding.

36. Lacking face-to-face clinical experience with patients was a serious deficiency in Respondent's education, and she could pose a risk to her patients because she lacks the knowledge, skills, and judgment that in-person clinicals impart.

37. There is no evidence that Respondent has ever demonstrated poor clinical judgment or decision-making skills, or that she has ever harmed a patient, client, or the public.

38. The deficiencies in Respondent's training have not caused actual damages, whether physical, economic, or otherwise.

39. Respondent's conduct has been consistent with a sincere belief that she was obtaining a legitimate degree from Sacred Heart.

40. Respondent did not purposely misrepresent her credentials to the Board, the Florida Board, or any employers.

41. The persons allegedly involved in Operation Nightingale exploited gaps in state regulatory schemes, indicating that system dynamics were a factor.

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

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

44. On July 15, 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.

45. SOAH Administrative Law Judge Sarah Starnes convened a hearing on the merits via Zoom videoconference on July 25, 2024. Assistant Attorney General Maya Bailey represented Staff, and attorney Adiah A. Oreyomi represented Respondent. Following the filing of admitted exhibits and written closing arguments, the record closed on September 27, 2024.

VI. CONCLUSIONS OF LAW

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

47. 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.

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

49. 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.

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

51. Respondent practiced nursing under a diploma that was unlawfully issued by Sacred Heart, 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).

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

53. Respondent was not qualified for licensure by endorsement as an LVN 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).

54. 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).

55. Staff did not meet its burden of proof to show that Respondent is subject to discipline for obtaining her nursing license by fraud. Tex. Occ. Code §§ 301.451(1), .452(b)(5).

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

57. The Board may consider the following as mitigating factors: no evidence of actual harm to patients, clients, or the public; no evidence of a lack of truthfulness or trustworthiness; no evidence of intentional misrepresentation; several years of safe practice with no issues or disciplinary actions in any jurisdiction; no actual damages; and system dynamics contributed to Respondent's violations. 22 Tex. Admin. Code § 213.33(c)(1)-(4), (6)-(8), (12).

58. The Board may consider the following as aggravating factors: potential harm to patients, clients, and the public; and inadequate education implicates fitness to practice. 22 Tex. Admin. Code § 213.33(c)(1), (5).

VII. RECOMMENDATION

Though authorized to revoke Respondent's License, the Board should consider an enforced suspension instead. The suspension would stop Respondent from practicing as an LVN until she addresses any educational gaps, but still provide an opportunity for Respondent to have her license reinstated upon completion of a remedial clinical practice program or other requirements imposed by the Board. Revocation could be triggered if Respondent fails to timely satisfy those requirements.

Signed October 24, 2024

ALJ Signature:

Sarah Starnes

Sarah Starnes
Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 12, 2024

Maya Bailey, Office of Attorney General
for the Texas Board of Nursing **VIA EFILE TEXAS**

Adiah Oreyomi
for Respondent Fatmata Nabie **VIA EFILE TEXAS**

RE: Docket Number 507-24-05478.TBN; *Texas Board of Nursing v. Fatmata Nabie*

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