DOCKET NUMBER 507-24-01762

IN THE MATTER OF PERMANENT CERTIFICATE NUMBER LVN 1050553, ISSUED TO MARY HAIKA WAMALWA	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

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

HEATHER D. HUNZIKER
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 Quisqueya unlawfully issued Respondent's diploma because it was approved to offer in-person practical nursing program in Florida.[1] Respondent's program through Quisqueya was not an approved Texas program and was not substantially equivalent to Texas standards for LVN programs.[2] Specifically, Respondent's nursing program was deficient because her clinical hours did not include any live pediatric or maternity 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 1050553, previously issued to MARY HAIKA WAMALWA, 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. 507-24-01762 (September 6, 2024), Exceptions Letter issued September 24, 2024.

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[1] Finding of Fact 3, 24, 29, 31 and Conclusion of Law 9.
[2] Finding of Fact 20, 32.
[3] Finding of Fact 17.
[4] Finding of Fact 33.
[5] Conclusion of Law 9.
[6] Tex. Occ. Code § 301.451(3)(B).

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 6, 2024

Ernest C. Garcia **VIA EFILE TEXAS**
Office of the Attorney General

Adiah A. Oreyomi **VIA EFILE TEXAS**
Nurse Defense Firm, PLLC

RE: SOAH Docket No. 507-24-01762; TBN No. CX4792232852; *Texas Board of Nursing v. Mary Haika Wamalwa*

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. 507-24-01762 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
MARY HAIKA WAMALWA,
RESPONDENT

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SOAH Docket No. 507-24-01762 Suffix: TBN

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS BOARD OF NURSING,
PETITIONER
V.
MARY HAIKA WAMALWA,
RESPONDENT

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the licensed vocational nurse (LVN) license (License) of Mary Haika Wamalwa (Respondent), obtained by endorsement of her licensure by the State of Florida, on the bases that: (1) Respondent used a fraudulent or unlawful license or diploma and/or fraudulently misrepresented her nursing education in her license application; (2) Respondent lacks the requisite education or degree; and, thus, (3) Respondent's practice of nursing constitutes a grave risk to public safety. The Administrative Law Judge (ALJ) finds Staff failed to demonstrate fraud on Respondent's part but recommends the Board revoke Respondent's License because she does not meet

Board standards to practice nursing; she is violating a Board rule; and her continued practice presents a serious risk to patient or public safety and is likely to deceive, defraud, or injure a patient or the public.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Matters of notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law.

In October and November 2023, Staff moved for official notice to be taken of the Board's evaluation of the evidence and for judicial notice of the Board's rules;[1] and moved for summary disposition based on the exhibits to be noticed.[2] Respondent responded to both motions.[3] A prehearing conference was held on the motions, after which the ALJ took notice of certain facts that are judicially cognizable, facts within the area of the Board's specialized knowledge, and Board rules.[4]

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[1] Motion for Official Notice to be Taken of the Agency's Evaluation of the Evidence and for Judicial Notice of the Agency's Rules and Request for a Ruling thereon, or in the Alternative for a Hearing on the Motion (October 25, 2023); Texas Board of Nursing's Corrected Motion for Notice to be Taken of the Agency's Evaluation of the Evidence and for Judicial Notice of the Agency's Rules and Request for a Ruling Thereon at the Hearing Scheduled for December 1, 2023 (Corrected Motion) (November 17, 2023).

[2] Motion for Summary Disposition (October 25, 2023); Petitioner's Reply to Respondent's Answer to Petitioner's Motion for Summary Disposition (November 30, 2023).

[3] Respondent's Answer to Petitioner's Motion for Summary Disposition (November 20, 2023); Respondent's Answer to Petitioner's Motion for Official Notice to be Taken of the Agency's Evaluation of the Evidence and for Judicial Notice of the Agency's Rules and Request for a Ruling Thereon, or in the Alternative for a Hearing on the Motion (November 29, 2023); Respondent's Amended Answer to Petitioner's Motion for Summary Disposition (December 1, 2023).

[4] Order No. 4: Taking Notice of Facts and Denying Motion for Summary Disposition (Order No. 4) (December 1, 2023) (taking notice of facts cited in Exhibit A to the Corrected Motion, at ¶¶ 1-9, 19-22, and 24-28; Exhibits 3, 19-22, and 24 to the Corrected Motion; and the Board's rules found in Title 22, Part 11 of the Texas Administrative Code). Respondent's counsel stated on the record at the preliminary hearing that Respondent did not dispute, or oppose notice being taken of, these facts.

On April 22, 2024, State Office of Administrative Hearings (SOAH) ALJ Heather D. Hunziker convened a hearing on the merits via Zoom videoconference. Assistant Attorney General Ernest C. Garcia represented Staff, and attorney Adiah A. Oreyomi represented Respondent. The record closed on July 11, 2024, with the filing of last closing brief.

II. BACKGROUND

Operation Nightingale. This case is the result of a law enforcement action against a fraudulent scheme, called "Operation Nightingale" by the Federal Bureau of Investigation (FBI) and the federal Health and Human Services Commission - Office of Inspector General (HHS-OIG), involving the sale and use of false and fraudulent nursing degree diplomas/transcripts/certificates.[5] The nursing schools involved in Operation Nightingale were based in Florida.[6] Staff has alleged that Respondent was part of the scheme.[7]

Respondent's Licensure. Respondent believed she was attending a satellite campus of an approved Florida school, Burnett International College (Burnett), that changed its name to Quisqueya School of Nursing, LLC (Quisqueya).[8] She obtained an LVN-equivalent license (called Licensed Practical Nurse, or LPN, in Florida)

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[5] *See Tex. Bd. of Nursing v. Omietimi*, SOAH Docket No. 507-23-18180, Proposal for Decision (PFD) (Nov. 20, 2023). That PFD offers a full discussion of Operation Nightingale and its scope, which is not reproduced here.

[6] Petitioner's Written Closing Argument (May 21, 2024) at 11.

[7] Staff's First Amended Formal Charges (Formal Charges) (April 5, 2024) at 1-3.

[8] According to the Florida Board of Nursing, Quisqueya School of Nursing, LLC was formerly Sunshine Academy, also known as Quisqueya Health Care Academy. Corrected Motion, Ex. A at ¶ 3; *see also* Order No. 4.

from the Florida Board of Nursing (Florida Board) on July 21, 2021.[9] She then applied for her License in Texas by endorsement based on her LPN license, receiving the License on November 23, 2021.[10]

Staff's Allegations. This case is a disciplinary action.[11] Staff makes three contentions in this case.[12] First, Staff argues Respondent obtained the License through fraudulent means by purchasing a fraudulent diploma and/or fraudulently misrepresenting her nursing education in her Texas license application. Committing fraud or deceit in obtaining a license can subject a licensee to Board sanctions, as can using a diploma, license, or record that has been fraudulently issued, counterfeited, altered, or obtained.[13] The ALJ finds Staff did not show Respondent committed this alleged misconduct and, thus, disciplinary action is not warranted on this factual record.

Staff's second allegation relates to Respondent's qualifications. In its second contention, Staff asserts Respondent's nursing program was unapproved and did not have substantially equivalent education standards to a Texas-approved nursing program; therefore, Respondent lacked the requisite education or degree for licensure. The ALJ finds Respondent's nursing program was not approved and not

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[9] Staff Ex. 22 at 187.

[10] Staff Ex. 18 at 144.

[11] *See* Formal Charges.

[12] Staff's Formal Charges list a single charge that is broken into three parts here for ease of analysis.

[13] Tex. Occ. Code §§ 301.451(1), (3), .452(b)(2), (5); *see* 22 Tex. Admin. Code (TAC) § 217.12(6)(H), (I).

substantially equivalent to a Texas program, and could not qualify Respondent for a Texas license.

Staff's third contention is that Respondent's practice of nursing under an unlawfully or fraudulently obtained diploma/license and without qualified training is likely to deceive, defraud, or injure the public; constitutes unprofessional conduct that may endanger a client's life, health, or safety; and presents a grave risk to the public.[14] A person is subject to disciplinary action for: violation of the Texas Nursing Practice Act (Act)[15] or a rule thereunder; fraud or deceit in procuring an LVN license; use of a nursing license, diploma, or transcript that has been fraudulently purchased, issued, counterfeited, or materially altered; or unprofessional conduct likely to deceive, defraud, or injure a patient or the public.[16] The ALJ finds Respondent's practice without qualifications is a serious risk to patient or public safety and is likely to deceive, defraud, or injure a patient or the public.

III. APPLICABLE LAW

A. BURDEN OF PROOF

The standard of proof is a preponderance of the evidence.[17] Who bears the burden of proof depends on the statute (here, the Act), the Board's rules, and

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[14] *See* 22 TAC § 217.12(4), (6)(H), (I).

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

[16] Tex. Occ. Code § 301.452(b)(1), (2), (5), (10).

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

documented agency policy.[18] The ALJ may also consider other factors, such as which party seeks affirmative relief and whether a party would be required to prove a negative.[19] Relevant here, the ALJ may weigh the parties' "relative access to and control over information pertinent to the merits of the case."[20] Staff seeks disciplinary action (revocation). On Staff's allegations, the burdens were as follows:

- Staff had the burden of proving Respondent's fraud or deceit in obtaining a license;
- Staff had the burden of identifying the legal and factual bases to show that Respondent's nursing program was unapproved and not substantially equivalent to Texas standards;
- Staff had the burden of proving the existence of facts justifying revocation—producing evidence that Respondent used a nursing license, diploma, or transcript that was fraudulently purchased, issued, counterfeited, or materially altered; and/or Respondent's practice of nursing constitutes unprofessional conduct and is likely to deceive, defraud, or injure the public. Respondent had the burden to prove any mitigating factors.[21]

B. LICENSING REQUIREMENTS

The Board is responsible for the regulation of nurses pursuant to the Act. A nurse may not practice nursing without a Board-issued license or under a diploma,

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[18] 1 TAC § 155.427.

[19] 1 TAC § 155.427(3)-(5).

[20] 1 TAC § 155.427(2).

[21] 1 TAC § 155.427.

license, or record that was (a) obtained unlawfully or fraudulently or (b) signed or issued unlawfully or under false representation.[22]

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."[23] By rule, the Board has specified that licensure by endorsement requires a nurse to have graduated from "an approved nursing education program" and "practiced nursing in another state within the four years immediately preceding" the licensure request.[24] However, applicants for licensure by examination (for graduates of nursing education programs within the United States) may, alternatively, have graduated from "a program with substantially equivalent education standards" to a Texas-approved nursing program.[25] For vocational nursing programs, substantial equivalency may be found if:

> (i) the program is approved by a state board of nursing or other governmental entity to offer a pre-licensure vocational/practical

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

[23] Tex. Occ. Code § 301.260(a)(2). LVN applicants must submit to the Board a sworn application that demonstrates their qualifications, accompanied by evidence that they have: (1) good professional character related to the practice of nursing; (2) successfully completed a program of vocational nursing education approved under Texas Occupations Code section 301.157(d); and (3) passed the jurisprudence examination approved by the Board. Tex. Occ. Code § 301.252(a).

[24] 22 TAC § 217.5(a)(1). For purposes of this PFD, citations to licensing requirements will be to the rule in effect at the time of Respondent's Texas license application that resulted in her LVN licensure, August 12, 2021. In October 2022, section 217.5(a)(1) was amended to require "Graduation from an approved Texas nursing education program *or a program with substantially equivalent education standards to a Texas approved nursing program as defined below.*" (emphasis added). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022) (adopting the rule as produced in 47 Tex. Reg. 4933, 4935 (Aug. 19, 2022)). *See* Tex. Occ. Code § 301.260(a).

[25] 22 TAC § 217.2(a)(4).

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.[26]

A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that is: (i) approved by the Board; (ii) accredited by a national nursing accreditation agency the Board has determined has acceptable standards; or (iii) approved by the state board of nursing of another state and the Board.[27]

Staff charged Respondent with not completing any Florida-approved nursing education program. Specifically, Staff alleged that Quisqueya was only approved by the State of Florida as an in-person nursing program to be administered and taught on its Florida Campus and was not approved to admit new students after August 3, 2018; however, Respondent enrolled after that, and attended classes and clinicals in Texas.[28]

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[26] 22 TAC § 217.2(a)(4)(B). As of 2022, these requirements were moved to 22 TAC section 217.5(a)(1)(B). *See* 47 Tex. Reg. 6581 (Oct. 7, 2022).

[27] Tex. Occ. Code § 301.157(d).

[28] Formal Charges at 1-2.

Additionally, Staff's Formal Charges identified the following shortcomings in Respondent's nursing education: "Respondent did not receive didactic and supervised clinical experiences within the state of Florida from Quisqueya (or Burnett) in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing."[29] Staff specifically alleged Respondent "engaged in zero hands-on clinicals with live patients within the state of Florida."[30]

C. DISCIPLINE

Pursuant to the Act, a nurse is subject to disciplinary action for, among other bases:

- A violation of the Act or a Board rule or regulation;
- Fraud or deceit in procuring or attempting to procure an LVN license;
- Using a nursing license, diploma, or permit, or transcript that has been fraudulently purchased, issued, counterfeited, or materially altered; or
- Unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.[31]

The Board has adopted rules to protect clients and the public from incompetent, unethical, or illegal conduct of licensees, which identify "behaviors in

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[29] Formal Charges at 2, citing 22 TAC § 217.5(a)(1)(B)(ii). Staff's Formal Charges appear to cite the *current* rules, not those in effect at the time of Respondent's license application that resulted in her Texas licensure, which are the applicable rules.

[30] Formal Charges at 2.

[31] Tex. Occ. Code § 301.452(b)(1), (2), (5), (10).

the practice of nursing that are likely to deceive, defraud, or injure clients or the public" as unprofessional conduct, including but not limited to:

- Conduct that may endanger a client's life, health, or safety.
- Providing information which was false, deceptive, or misleading in connection with the practice of nursing;
- Failing to answer specific questions or providing false or misleading answers in a licensure or employment matter that could reasonably affect the decision to license, employ, certify or otherwise utilize a nurse. [32]

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.[33] When determining the proper sanction, 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 mitigating factors.[34] The Board's schedule of disciplinary sanctions is a disciplinary matrix.[35] 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.[36]

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[32] 22 TAC § 217.12(4), (6)(H), (I).

[33] Tex. Occ. Code § 301.453; 22 TAC § 213.33(e).

[34] Tex. Occ. Code § 301.4531(b).

[35] 22 TAC § 213.33.

[36] 22 TAC § 213.33(b).

IV. EVIDENCE

Staff called Respondent as a witness and presented testimony from Jason Bowman and Anthony Diggs. Respondent also testified on her own behalf. The ALJ admitted 26 exhibits for Staff[37] and 12 for Respondent,[38] in addition to having previously taken notice of facts and six documents as reflected in Order No. 4. Additionally, the ALJ takes notice of the Indictment in Case No. 23-600007-CR, *United States of America v. Gail Russ, et al*, filed with in the United States District Court for the Southern District of Florida on January 12, 2023.[39]

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[37] Staff's admitted exhibits consisted of: August 22, 2019 receipt billed to Ms. Wamalwa (Staff Ex. 1); November 2019 text message (Staff Ex. 2); December 2019 text message (Staff Ex. 3); January 2020 text message (Staff Ex. 4); February 2020 text message (Staff Ex. 5); Quisqueya Health Care Academy Transcript (Staff Ex. 6); June 22, 2020 NCLEX-PN Application of Respondent (2020 Application) (Staff Ex. 7); August 12, 2021 LVN Endorsement Application of Respondent (2021 Application) (Staff Ex. 8); Information filed in *U.S. v. Napoleon* (Staff Ex. 9); Board's Formal Charges (Staff Ex. 14); Affidavit of Matthew C. Lane (Staff Ex. 15); Judgment in *U.S. v. Napoleon* (Staff Ex. 17); Affidavit of Anthony Diggs (Staff Ex. 18); second Affidavit of Anthony Diggs (Staff Ex. 19); Factual Basis in *U.S. v. Serge Jean* (Staff Ex. 20); Plea Agreement in *U.S. v. Serge Jean* (Staff Ex. 21); Florida Department of Health License Verification (Staff Ex. 22); Docket Sheet in *U.S. v. Russ* (Staff Ex. 24); Petitioner's Interrogatories to Respondent (Staff Ex. 25); Respondent's Answers to Interrogatories (Staff Ex. 28); Respondent's Response to Disclosures (Staff Ex. 29); Respondent's Response to Requests for Production (Staff Ex. 30); Deposition Transcript of Respondent (Staff Ex. 31, corrected to include the "Read and Sign"); Judgment in *U.S. v. Russ* (Staff Ex. 32); C.V. of Susan Sportsman (Staff Ex. 33); and Affidavit of Serge Jean (Staff Ex. 34).

[38] Respondent's admitted exhibits consisted of: Respondent's tuition receipt from Burnett (Resp. Ex. 1); email regarding Respondent's loan application (Resp. Ex. 2); Remind conversations (Resp. Ex. 3); messages from Serge Jean to students (Resp. Ex. 4); text messages to Ludine Jean (Resp. Ex. 5); photos of Respondent and classmates (Resp. Ex. 6); school notes, notebooks, notes on index cards, textbook, and worksheets (Resp. Ex. 7); Board's Frequently Asked Questions on "Clinical Experiences" from https://www.bon.texas.gov/faq_education.asp.html#topics (Resp. Ex. 8); nursing education article (Resp. Ex. 9); Board 2019, 2021, 2022, 2023 Nursing Education Program Information Survey (Resp. Ex. 10); Board license verification for Serge Jean (Resp. Ex. 11); and Florida Board license verification for Michelle Dumas (Resp. Ex. 12).

[39] The indictment in *U.S. v. Russ* is Exhibit 6 to Exhibit A of the Corrected Motion. Petitioner re-urged its motion for such notice to be taken in its closing briefing. Petitioner's Reply to Respondent's Closing Brief (July 11, 2024) at footnote 1. The ALJ takes notice of the fact of Gail Russ's indictment, but not the truth of the factual statements or allegations in the Indictment, pursuant to Texas Rules of Evidence 201-202; *Freedom Communications, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012); *Stephens v. LVN Corp.*, 488 S.W.3d 366, 373 (Tex. App.—El Paso 2015, no pet.); *Guyton v. Monteau*, 332 S.W.3d 687, 692-93 (Tex. App.—Houston [14th Dist.] 2011, no pet.); and *Davis v. State*, 227 S.W.3d 766, 768 (Tex. App.—Tyler 2005, pet. granted), aff'd, 227 S.W.3d 733 (Tex. Crim. App. 2007).

A. SUMMARY AND DOCUMENTARY EVIDENCE

Respondent was licensed as a LPN in the State of Florida on July 21, 2021; and that license was deactivated or expired on July 31, 2023.[40] Respondent was licensed, by endorsement of her Florida license, in Texas as a LVN on November 23, 2021.[41] In her August 2021 Texas license application (2021 Application), Respondent indicated that she completed a nursing education program from Quisqueya, in Boynton Beach, Florida, on December 13, 2019;[42] she passed the NCLEX-PN[43] exam on July 22, 2021,[44] and she was licensed as an LPN in Florida.[45]

Quisqueya was approved by the Florida Board as an in-person nursing education program only, not approved to conduct didactic or clinical instruction via online instruction, and not approved to admit any new students after August 3, 2018.[46] Quisqueya's Dean/Director, Gail Russ, represented in an affidavit to the Board that Respondent entered Quisqueya in December 2018 and complete

[40] Corrected Motion, Ex. A at ¶ 5 and Ex. 24 at 1; *see also* Order No. 4.

[41] Corrected Motion, Ex. A at ¶ 8; *see also* Order No. 4.

[42] Staff Ex. 19 at 158.

[43] The NCLEX-PN is the nationwide standardized test for vocational nurses administered by the National Council of State Boards of Nursing.

[44] Staff Ex. 19 at 159.

[45] Staff Ex. 19 at 159.

[46] Corrected Motion, Ex. A at ¶ 5; *see also* Order No. 4.

1,350 hours of course work in satisfaction of the requirements for graduation.[47] According to Respondent's transcript from Quisqueya, signed by Ms. Russ, Respondent completed her courses there on December 7, 2019.[48] And, according to the transcript, Respondent's courses included: Vocational Adjustment, Human Growth and Development, Body Structure and Function, Principles of Nutrition, Fundamentals of Nursing, Medical/Surgical Nursing, Pharmacology, Maternal/Newborn Nursing, Pediatric Nursing, Geriatric Nursing, and Mental Health Concepts.[49]

Respondent stated that she never attended any classes or clinicals in Florida—only attending in Houston, Texas; and, other than on her Application, she contends that all her nursing classes and clinicals were through Burnett and Serge Jean was the sole class instructor.[50] Respondent did her nursing clinicals both in a school lab and with real patients at Brookshire Nursing and Rehabilitation (Brookshire) in Houston.[51] Staff's exhibits include a "license practical nursing" program transcript purportedly from Jean's NCLEX Review (Jean's NCLEX) in Houston, Texas,

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[47] Corrected Motion, Ex. A at P 4; Staff Ex. 15 at 122-23. It is notable that this fact statement in the Corrected Motion, and Staff Exhibit 15, are both attributed to documents within documents within documents (Corrected Motion at P 4: "See Exh. 15 Quisqueya Official Transcript signed by Gail Russ on May 11, 2020, along with Affidavit signed by Gail Russ both of which are attached to the Affidavit of James Cleghorn, dated May 8, 2023 that is attached to the FBI employee Matthew Coulter Lane dated Apr. 10, 2023")—otherwise known as hearsay.

[48] Corrected Motion, Ex. A at P 4; Staff Ex. 15 at 123; Staff Ex. 6. As explained in footnote 47, *supra*, this fact statement in the Corrected Motion and Staff Exhibit 15 are both attributed to documents within documents within documents, making them hearsay. Staff Exhibit 6 appears to be an exact copy of Staff Exhibit 15 at 123, merely with different bates numbers; therefore, Staff Exhibit 6 carries the same weight in terms of its hearsay origins.

[49] Staff Ex. 15 at 123; Staff Ex. 6.

[50] Staff Ex. 28 at 231; Staff Ex. 31 at 16, 19, 30-31. Respondent testified that Michelle Dumas was the clinical instructor during her actual patient care clinicals.

[51] Staff Ex. 31 at 32-35.

provided and attested to by Mr. Jean.[52] Respondent represents that she has not received any certificate of completion, degree, or diploma from any nursing education program.[53]

On July 18, 2023, the sole manager and authorized representative of Quisqueya, Johanah Napoleon, was found guilty of Conspiracy To Commit Mail Fraud and Wire Fraud for her involvement in the sale of false and fraudulent nursing diplomas and transcripts.[54] On April 2, 2024, Ms. Russ was similarly found guilty of multiple counts of wire fraud and conspiracy to commit wire fraud.[55] On September 15, 2023, Mr. Jean entered into a Plea Agreement to plead guilty to conspiracy to commit wire fraud, in Case No. 23-60010-CR-Smith, and signed the Factual Basis in Support of Plea, representing that:

1. Mr. Jean owned and operated Jean's NCLEX, along with his wife, Ludnie Jean;

2. Through Jean's NCLEX, the Jeans solicited individuals seeking nursing credentials;

3. Through Jean's NCLEX, the Jeans created and distributed, via interstate wire communications, fraudulent official transcripts and diplomas from Sacred Heart International Institute Inc (Sacred Heart), a nursing education program licensed by the Florida Board of Nursing;

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[52] Staff Ex. 34.

[53] Staff Ex. 30 at 235; Staff Ex. 31 at 18-19, 24.

[54] Staff Ex. 9 at 34-37; Staff Ex. 17 at 136.

[55] Staff Ex. 32 at 312.

4. The Jeans' fraudulent transcripts and diplomas fraudulently represented 466 individuals attended Sacred Heart and completed the necessary courses and/or clinicals to obtain LPN diplomas; and

5. Individuals used the Jeans' false and fraudulent diplomas and transcripts and other records to obtain LVN licensure in Texas. [56]

Relevant to school attendance, Respondent's evidence includes a receipt for payments to Burnett made between February and August 2019;[57] student-instructor messages through the "Remind" application, from January 25, 2019 through March 10, 2020;[58] photos of nursing students at Brookshire;[59] 421 pages of her handwritten and highlighted school notes;[60] and the Texas and Florida nursing boards' license verifications for Mr. Jean and Ms. Dumas.[61]

Regarding working as a LVN in Texas, Respondent's counsel stated on the record that Respondent "has been working as a Texas nurse for the past three to four years with no issues whatsoever." Additionally, Respondent explained during her March 5, 2024 deposition that she was, at that time, working two nursing jobs in Texas.[62] Lastly, Respondent's interrogatory answers indicate that she worked with

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[56] Staff Exs. 20, 21.

[57] Resp. Ex. 1.

[58] Resp. Exs. 3-5. Respondent testified that Remind is a communications application used by Burnett to send messages between administrators, instructors, and students.

[59] Resp. Ex. 6.

[60] Resp. Ex. 7.

[61] Resp. Exs. 11, 12.

[62] Staff Ex. 31 at 11-12.

a third employer, Westwood Rehabilitation and Healthcare Center in Houston, in the calendar year before commencing her nursing studies and October 31, 2023.[63] Respondent attested that she has never received any complaints at work or from the Board or Florida Board.[64]

B. TESTIMONY OF RESPONDENT[65]

Respondent testified that she never lived in Florida, did not visit Florida in 2019, and never intended to work there. Rather, since 2017, she has lived and worked in the Houston, Texas area. She was referred to Burnett by a coworker who was enrolled there; and, in December 2018, she went to an address in Houston to inquire about enrolling in Burnett, where she met Mr. and Mrs. Jean. She thought Burnett was approved to operate in Texas; but she never checked with the Board to see if Burnett was approved to provide licensed vocational nursing education or training in Texas, nor with the Florida Board to determine whether Burnett was approved to provide classes in Texas.

Respondent's school application was to Burnett; and that is the school she paid.[66] After she completed her classes at Burnett, but before she finished her payments, the school changed to Quisqueya.[67] She was told of the name change, but

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[63] Staff Ex. 28 at Interrogatory Answer 2; *see* Staff Ex. 25 at 217-18 ("Time Period" defined and Interrogatory 02).

[64] Staff Ex. 31 at 12.

[65] In addition to her live testimony during the hearing, a transcript of Respondent's earlier deposition testimony was admitted as Staff Exhibit 31. In it, she discussed in greater detail some of the same topics touched upon at hearing.

[66] *See* Resp. Ex. 1, a Burnett receipt for many, but not all, of Respondent's payments to Burnett.

[67] *See* Staff Ex. 31 at 252.

the school was the same. She never attended classes or clinicals through Quisqueya. She was aware that Mr. Jean texted students from, and ran another business called, "Jean's NCLEX Review;" but she denied having attended Jean's NCLEX. Although Staff Exhibit 34 purports to be a transcript from Jean's NCLEX in Respondent's name, Respondent testified that she did not attend Jean's NCLEX and she never saw that transcript, which she noted does not have her social security number or address on it. The testified that she had no reason to believe Burnett was not authorized to provide education in Texas; did not buy her transcript or diploma from the Jeans; and does not know who Ms. Napoleon is.

She also testified that, although she swore in her 2020 and 2021 Applications that she graduated from Quisqueya in Boynton Beach, Florida,[68] she knew her education had come from Burnett, which changed to Quisqueya, explaining: "[i]t was just the name that was changed. So it's still the same school." She also explained that there was no drop-down option to indicate Burnett on the electronic 2020 Application. In further explaining why, in her license applications, she did not disclose that her nominally Florida-based nursing education actually took place in Texas, Respondent explained that she was unaware she needed to add such information.[69]

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[68] *See* Staff Ex. 7 at 10; Staff Ex. 8 at 24, 31.

[69] The difficulty of explaining her school's location became apparent during Respondent's deposition:

> "**Q. Why does it say Florida, if you attended school in Texas?** A. Okay, this is the reason: If I would have put here Houston, Texas, that means I'm lying, because the school, the headquarters, is in Florida, and that's why it has to be Florida. I cannot put Houston, Texas. If it would have said 'Where did you physically attend,' then I would put Houston, Texas; otherwise, I would be lying. **Q. Did you ever feel the need to tell the Texas Board of Nursing that you actually attended in Houston?** A. They did not ask. There was nowhere that question was asked." Staff Ex. 31 at 266.

She further explained, in her deposition errata:

As for payment, Respondent testified that her education cost her around $13,000, which she finished paying around February 2020 with a last payment of about $2,000. She took out a $3,000 loan for school, which she had to pay to Burnett before she could sit for her exam.

As for her education at Burnett, Respondent started school in January 2019; and all her classes and clinicals were taught in Houston through Burnett, not Quisqueya. Mrs. Jean was the school administrator. Mr. Jean, who was licensed as an RN in Texas at the time, was the sole class instructor;[70] and Respondent's classes took place three days a week, eight hours a day. She received classroom instruction and participated in clinicals regarding medical/surgical, maternal care, pediatric, geriatric, and mental health. Respondent recalled: learning about the endocrine system in medical/surgical; working with live patients, monitoring blood sugar and taking care of diabetics, in clinicals; doing case studies, such as how to monitor the vital signs of a pregnant patient, in maternal health; learning how to take care of a patient having seizures, in pediatrics; and learning how to prevent aspiration, in geriatrics. From Mr. Jean, she also received education in microbiology; sociology; physical, social, or behavioral sciences; nursing sciences; body structure and function; pharmacology; nutrition; human growth and development; signs of emotional development; the vocational nursing scope of practice; and nursing skills.

"Besides there being no such question on the endorsement application, I had no reason to think that I would need to inform the Texas Board of Nursing of anything. If the name of the school did not appear in the endorsement application list, I may have had a reason to call the Texas or Florida Board, but Quisqueya appeared on the list and I choose [sic] the name." Staff Ex. 31 at attached errata sheet referring to pg. 30 line 6-7 of the deposition.

[70] *See* Resp. Ex. 11.

As for Respondent's clinical hours with live patients, they took place from August to November of 2019 at Brookshire, a nursing home in Houston. She explained the exhibit photos of her and other students in clinicals at Brookshire, wearing Burnett badges.[71] She practiced skills there including patient transfers, wound care, oxygen administration, charting, and specimen collection, totaling around 220 clinical hours. Her clinical instructor at Brookshire was Michelle Dumas, who was licensed in Florida at the time.[72] During her clinicals, Respondent never dealt with children or maternity patients, but she did simulations in a lab and on a computer.

Respondent took her final exit exam in December 2019; and she identified Respondent Exhibit 7 as 421-pages of her school notes, worksheets, flash cards, and photos of her school notebooks. After graduation, she passed the NCLEX-PN exam in July 2021, and was licensed in Florida the very next day; and 20 days later she sought a LVN license by endorsement in Texas. She never received a certificate of completion, degree, or diploma from Burnett, Quisqueya, or any other nursing education program. She stated that she tried to get one from Ms. Jean but could not get Ms. Jean on the phone.

C. TESTIMONY OF MR. BOWMAN

Mr. Bowman is an educational policy analyst at the Florida Commission on Independent Education (FCIE), the agency responsible for granting licenses for

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[71] Resp. Ex. 6. In the photos, the badges are too small to read; however, Respondent testified that they identified Burnett as the students' school.

[72] *See* Resp. Ex. 12.

nursing programs in conjunction with approval from the Florida Board. He testified about Florida's accreditation statutes and rules and the accreditation of Quisqueya. He stated that all post-secondary schools must be licensed and are subject to Florida's statutes and rules. Each nursing program in Florida must submit a program outline including faculty credentials, clinical affiliation agreements, and the like.

Mr. Bowman testified that Quisqueya was formerly known as Sunshine Academy, and its nursing program was licensed by the FCIE in 2009, with practical nursing approved in June 2012. After a change of ownership, Quisqueya School of Nursing LLC became the owner, and the school was approved to do business as Quisqueya Healthcare Academy. In March 2018, the FCIE voted to deny Quisqueya's license, and in June 2018 the school was ordered to close. The order became final on or about December 4, 2018, with teach-out of remaining students to be completed on about December 19, 2019. However, Mr. Bowman noted that a student could have enrolled in Quisqueya in December 2018 or January 2019.

Mr. Bowman could not say whether the order for Quisqueya to cease was communicated to students; but he noted that schools' licensure status must be in their catalogues. He said that students could determine schools' licensure status by contacting the FCIE, or by checking the FCIE's or Florida Board's online lists; but he also agreed that nothing would necessarily alert students of the need to find out about a change in status.

Mr. Bowman testified that Quisqueya's nursing assistant and practical nursing programs were not approved for any instruction online or outside of Florida.

Further, instruction or clinicals outside of Florida would have been outside the scope of Quisqueya's FCIE approval.

D. TESTIMONY OF MR. DIGGS

Mr. Diggs is the director of enforcement with the Board and testified as to the Board's response to the Nightingale investigation. He stated that Jean's NCLEX was implicated in Operation Nightingale and has never been approved by the Board to provide nursing education; and neither has Quisqueya or Burnett. Further, Respondent was named by Ms. Napoleon as a person who received a fraudulent degree. Therefore, the Board had concerns about her nursing education.

Mr. Diggs pointed out that Respondent's 2020 Application represented that she graduated from Quisqueya, in Florida, on December 13, 2019;[73] and the Board relies on that information when it considers an application. He added that, at the time of the 2020 Application, Respondent had not yet taken her NCLEX exam. As to Respondent's 2021 Application, Mr. Diggs noted it was an endorsement application based on her Florida license and it stated that she passed the NCLEX on July 22, 2021.[74] He said that the program address is not something that the applicant types into the application themselves, but is auto-generated when the applicant enters the name of their school in a drop-down list.

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[73] *See* Staff Ex. 7 at 10.

[74] *See* Staff Ex. 8 at 25.

Mr. Diggs testified that Respondent's affirmation in the applications that she graduated from Quisqueya was "material misrepresentation to the Board." He testified that the Board relies on its sister-state agencies, in this case the Florida Board, as to the fact that the endorsement applicant holds the license in that jurisdiction and is in good standing, which is merely verified through an online check of the Florida Board's website; the Board does not verify the education underlying that sister-state's licensure.

Once Operation Nightingale was disclosed to the Board, Mr. Diggs explained, the Board investigated Respondent further and concluded that she never obtained an education from Quisqueya, but merely procured a fraudulent transcript or degree; therefore, she did not receive the education necessary to be a nurse in Texas. During the investigation, Respondent indicated she began her studies with Quisqueya in December 2018; however, Quisqueya was not permitted by the FCIE to take new students after August 2018. Mr. Diggs avowed that, as a result of Respondent's lack of education, she presents a risk of harm to patients and public safety. Although he said the Board concluded that Respondent obtained her transcript/degree by fraud, Mr. Diggs admitted that he had not seen any receipts showing such a purchase by Respondent and he agreed that the Operation Nightingale informant whose affidavit named Respondent as having fraudulently obtained the credential, Ms. Napoleon, has been convicted of crimes involving dishonesty.

Additionally, Mr. Diggs was cross-examined about numerous Board rules regarding nursing instruction program requirements, including: minimum number of hours of instruction, minimum number of full-time instructors, faculty

qualifications, timing of didactic education versus clinicals, minimum number of clinical hours, and what types of clinicals would be expected.[75] Mr. Diggs, as the Board's representative, conceded that he did not know whether Respondent participated in clinical learning experiences or simulations in her nursing program. He agreed that: (1) the Board allows students to transfer schools; (2) the Board gives schools discretion to determine how many hours to complete and when to participate in clinicals; and (3) there is no minimum number of hours of instruction required. He also read into the record, but was not questioned about, Respondent Exhibit 8, which he recognized as the Board's Frequently Asked Questions (FAQ) web page.[76]

V. ANALYSIS

A. RESPONDENT DID NOT COMMIT FRAUD

Staff alleged Respondent committed fraud or deceit in procuring her license[77] by purchasing a fraudulent diploma, attending Jean's NCLEX rather than Burnett or Quisqueya, and stating on her license 2021 Application that she graduated from Quisqueya in Boynton Beach, Florida without disclosing that she received instruction in Texas. Staff did not prove any of these allegations.

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[75] Mr. Diggs was asked, "What is your understanding of what clinical learning experiences mean for the Texas Board of Nursing?" He responded, "It's limited, I don't have that much information. I'm not an educational consultant."

[76] The FAQ portions read include: "[a]cute care settings providing care to sick children are not specifically required in the rule;" "Examples of clinical settings for maternity nursing include . . . simulation experiences;" and "The rules DO NOT REQUIRE: a specific number of clinical hours in nursing of children or maternity nursing; that clinical learning experiences in nursing of children and maternity nursing occur only in acute care settings; or that all clinical learning experiences occur in an actual clinical setting." Resp. Ex. 8 at 538 (emphasis in original).

[77] Tex. Occ. Code §§ 301.451(1), .452(b)(2).

1. No Fraudulent Purchase of Degree

Staff asserts that Ms. Napoleon named Respondent as a person who received a fraudulent degree. But Staff also concedes that Ms. Russ claimed Respondent entered Quisqueya in December 2018, completed 1,350 hours of course work in satisfaction of the requirements for graduation, and completed her courses there on December 7, 2019. Neither Ms. Napolean nor Ms. Russ testified; and they were both found guilty of conspiracy and fraud, rendering their statements questionable. More importantly, Respondent testified credibly that she attended classes and completed coursework. And Respondent testified that she has never received a certificate of completion, degree, or diploma from Burnett, Quisqueya, or any other nursing education program, despite her best efforts. Would not the most basic element of a fraudulent purchase of credentials, as alleged by Staff, be the providing of those credentials (whether in the form of transcript or diploma) to the purchaser? The evidence did not show that Respondent committed fraud by purchasing an unauthorized degree.

2. No Fraudulent Attendance of Jean's NCLEX

Staff argued that Respondent committed fraud or deceit by attending Jean's NCLEX rather than Burnett or Quisqueya. To that end, Staff introduced text messages from Mr. Jean concerning Jean's NCLEX and what Staff purported to be a transcript from Jean's NCLEX in Respondent's name. However, Respondent testified credibly that she did not pay any money to Jean's NCLEX; she applied to, made payments to, and attended Burnett, which later became Quisqueya; she did not attend Jean's NCLEX; and she had never seen that transcript. As she noted, the

purported transcript does not have her social security number, address, or other identifying information on it. Furthermore, the transcript was authenticated solely by the affidavit of Mr. Jean, who attested that it came from the records of Jean's NCLEX; however, he was also convicted of fraud in Operation Nightingale, rendering his statements untrustworthy. As for the text messages, Respondent explained that, although she noticed at some point that they referred to Jean's NCLEX, she knew they were from her instructor, Mr. Jean, and she assumed the texts were just mass-messaging in the name of his other business, not her school. Additionally, there is a text from the same sender referring to Burnett, not Jean's NCLEX, and purporting to give Burnett's school tax identification number.

Contrary to Staff's assertion that she committed fraud by attending Jean's NCLEX, Respondent presented preponderant, credible evidence that: (1) she was actually enrolled in a school and did attend in-person classes; (2) the school was first named Burnett and later changed to Quisqueya; and (3) she believed, and had no reason to doubt, that the school was approved in Florida, and she did not question the legitimacy of holding classes and clinicals in Texas. In addition to her testimony, such evidence includes her receipt for payments to Burnett made between February and August 2019; numerous student-instructor messages via Remind, from January 2019 through March 2020; photos of her with fellow nursing students at Brookshire; and 421 pages of handwritten and highlighted school notes. And Mr. Diggs conceded that the Board allows students to transfer schools. The evidence did not show that Respondent committed fraud by attending Jean's NCLEX rather than Burnett or Quisqueya.

3. No Fraud in Failure to Disclose Location of Classes

Last, Staff alleges that Respondent committed fraud by misrepresenting that she graduated from Quisqueya in Boynton Beach, Florida, and not mentioning her instruction in Texas, because Quisqueya was not approved for out-of-Florida instruction or clinicals, which were outside the scope of Quisqueya's FCIE approval.

Neither the Act nor Board rules appear to provide a definition of fraud. Therefore, turning to the common law is appropriate. An 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.[78] In this case, the evidence does not establish that, when Respondent represented that she was a graduate of Quisqueya to obtain her License, which she admits doing, she knew that the representation was false or made it recklessly.

Respondent acknowledged that her classes and clinicals took place in person in Houston, Texas; and that she never saw any certificate of completion, degree, or diploma from any nursing education program. But she testified that she believed she graduated from Burnett, which changed to Quisqueya shortly after she completed her classes; and she felt that she was well prepared to enter the nursing practice. The circumstantial evidence supports this belief. Respondent passed a final exam from Burnett, and later passed the NCLEX exam. She said the school had a physical

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[78] *Formosa Plastics Corp. USA v. Presidio Eng'rs and Contractors, Inc.*, 960 S.W.2d 41, 47-48 (Tex. 1998); *see also Fraud,* O'Connor's Texas Causes of Action Ch. 12-A § 1 (2023 ed.) (collecting cases); *Fraud*, Black's Law Dictionary (11th ed. 2019) (providing two definitions, with one requiring a knowing misrepresentation and the other requiring a reckless misrepresentation).

location, with classes meeting three times a week for a year, and clinical rotations at a working facility. In choosing the school, Respondent testified that she was referred there by a coworker who was enrolled; but she never checked with the Board or Florida Board to see if the school was approved in Texas or approved by Florida to provide classes in Texas. Respondent's lack of awareness of Quisqueya's closure order is supported by Mr. Bowman's testimony that he could not say whether the order for Quisqueya to cease was communicated to students, and that nothing would necessarily alert students of the need to find out about the change in status. Moreover, Mr. Bowman testified that Quisqueya was licensed by FCIE and approved by Florida Board up to the month Respondent enrolled, and was authorized to teach-out its remaining students through the date of Respondent's final exam.

Additionally, while Staff takes issue with the substance of Respondent's nursing education, it is not established that a person without experience in nursing education would question whether this program was providing the education that it marketed—by Respondent's testimony, it included classes and clinicals in medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing, under two different instructors. Although it is possible that a person would have questioned the school's program given its in-person operation in Texas while Florida-based, its low number of faculty, and the forced transfer of students from Burnett to Quisqueya, the fact that Respondent did not question the school or was ignorant about the Florida Board's jurisdiction does not rise to the level of fraud.

Staff further suggests that Respondent had a duty to disclose that her Florida-based nursing education took place in Texas; however, Respondent was unaware she needed to add such information. Mr. Diggs and Respondent both testified that the school's address is not entered into applications by applicants, but rather is auto-generated when they choose the school name from a drop-down menu. The ALJ finds that Respondent's failure to proactively clarify the paradox in the auto-generated school address in her license applications does not rise to the level of fraud. In conclusion, the evidence did not show that Respondent committed fraud by failing to disclose the location of her classes.

Because Respondent did not commit fraud or deceit in procuring her license, the ALJ finds Staff did not demonstrate that Respondent violated Texas Occupations Code section 301.451(1) or is subject to discipline under Texas Occupations Code section 301.452(b)(2) or (5). Thus, disciplinary action is not warranted on this factual record.

B. RESPONDENT IS NOT QUALIFIED FOR A TEXAS LVN LICENSE

Staff alleged that Respondent's nursing program was unapproved and not substantially equivalent to Texas standards; therefore, Respondent lacked the requisite education or degree for licensure.

1. Respondent's Nursing Program Was Not Approved in Texas or Florida

According to Respondent, she has not received any certificate of completion, degree, or diploma from any nursing education program. Mr. Diggs testified that

neither Quisqueya, nor Burnett, nor Jean's NCLEX have ever been approved by the Board to provide nursing education. Nevertheless, Respondent testified that she applied to Burnett in December 2018, attended the program from January to December 2019 in Texas, never attended courses or clinicals in Florida, and graduated after passing a final exam on December 18, 2019. She also testified that her school changed from Burnett to Quisqueya shortly after she completed her classes but before she finished paying the school.

According to Mr. Bowman, Quisqueya's license was denied, and the school ordered to close, by the FCIE effective December 4, 2018; but teach-out was permitted until December 19, 2024. Thus, Respondent could have enrolled in Quisqueya in December 2018 or January 2019 and completed her studies as she testified, before the school's teach-out ended. However, Mr. Bowman was very clear that Quisqueya was only licensed and approved by the Florida Board for a vocational nursing program *in Florida*, for students who completed the course of study on campus *in Florida*, and never licensed or approved for a nursing program *in Texas*, because instruction or clinicals outside of Florida were outside the scope of Quisqueya's FCIE approval.

Setting aside the questions of whether the school that Respondent believed she was attending to begin with (Burnett) was licensed in Florida in the name of Quisqueya, and whether Respondent's enrollment and program completion were within the teach-out deadlines, it is clear that Respondent's classes and clinicals in Texas were outside the scope of any Quisqueya FCIE approval. Therefore, the ALJ finds that Respondent's nursing program was not approved in Texas or Florida.

2. Respondent's Nursing Program Was Not Substantially Equivalent to a Texas-Approved Nursing Program

From the record, it is unclear which type of license application Respondent was licensed under—licensure *by endorsement* (under 22 TAC section 217.5) versus *by examination for United States graduates* (under 22 TAC section 217.2). The 2021 Application form is entitled "LVN Endorsement Application for Graduates of U.S. Programs;"[79] whereas the 2020 Application is titled "NCLEX-PN Application - U.S. Graduates."[80] Additionally, the 2021 Application asks whether and in which state the applicant is licensed.[81] Staff and Mr. Diggs, the Board's representative, referred to the 2021 Application as an "endorsement application."

At the time of Respondent's 2021 Application, an applicant who passed the NCLEX could qualify for licensure by endorsement from another state by practicing there and graduating from an approved program, or could qualify for licensure by examination by completing a program with substantially equivalent education standards to a Texas-approved nursing program.[82] And, by definition for vocational nursing programs, substantial equivalency requires the program be approved.[83] In other words, whether qualifying for licensure by examination or by endorsement, at the time Respondent applied for her license, she had to have completed an approved

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[79] Staff Ex. 8 at 15.

[80] Staff Ex. 19 at 165.

[81] Staff Ex. 8 at 25.

[82] Tex. Occ. Code § 301.260; 22 TAC §§ 217.2(a)(4), .5(a)(1).

[83] 22 TAC §§ 217.2(a)(4)(B)(i).

program. As discussed above, she did not. Therefore, she did not qualify for Texas licensure.

Moreover, licensure by endorsement requires the applicant to have practiced in the endorsing state; and the evidence indicates that Respondent never practiced in Florida. On the contrary, she never lived in Florida, never intended to work in Florida, has lived and worked in Houston since 2017, and applied for Texas licensure less than one month after becoming licensed in Florida; and there is no evidence she ever worked in any state besides Texas.[84] Therefore, that she never worked outside Texas made Respondent doubly unqualified for licensure by endorsement.

Respondent argued that her education was, nevertheless, substantially equivalent to a Texas program. To that end, Respondent testified that she had classroom instruction and clinicals with licensed instructors regarding all the topics required in 22 TAC section 217.2(a)(4)(B), in addition to other topics; and she recalled skills learned in each area.[85] Additionally, she discussed completing hundreds of clinical hours with live patients at a nursing home and in labs; spoke of practicing and developing specific skills at the nursing home; and admitted photos of her there with other students.[86] Furthermore, she testified that she worked with simulations of children and maternity patients.[87]

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[84] *See* Staff Exs. 8, 22.

[85] *See also* Staff Ex. 31 at 49-54. Respondent's class notes also reflect these subjects. Resp. Ex. 7.

[86] Staff Ex. 31 at 34-35, 40.

[87] Staff Ex. 31 at 61.

Unfortunately for Respondent, because vocational nursing programs must be approved in order to be determined to have substantially equivalent education standards to a Texas approved nursing program, none of the specifics of Respondent's studies can render her program substantially equivalent. Consequently, Respondent did not meet her burden as to substantial equivalency and the ALJ cannot find that her course of study was substantially equivalent to a Texas-approved program. In short, Respondent did not qualify for Texas licensure —whether by endorsement or by examination.

C. RESPONDENT'S UNQUALIFIED PRACTICE OF NURSING IS UNPROFESSIONAL CONDUCT LIKELY TO INJURE THE PUBLIC

Staff alleged that Respondent practiced under a nursing license or diploma that was fraudulently purchased, issued, or obtained by providing false or misleading answers on her 2021 Application; that Respondent's practice without proper training could endanger the life, health, or safety of clients or the public; and that this conduct was unprofessional.

A person may not practice nursing under a diploma, license, or record that was obtained unlawfully or fraudulently, or signed or issued unlawfully or under false representation.[88] Moreover, unprofessional conduct that is likely to deceive, defraud, or injure clients or the public includes: (1) conduct that may endanger a client's life, health, or safety; and (2) providing false or misleading answers in a licensure matter that could reasonably affect the decision to license a nurse.[89]

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[88] Tex. Occ. Code § 301.451(3).

[89] 22 TAC § 217.12(4), (6)(I).

As discussed above, Respondent's license was obtained through her false (albeit unwittingly false) representation that she attended a Florida Board-approved nursing school, when in fact, Quisqueya was not approved for instruction outside Florida and Quisqueya had already been ordered by the FCIE to close before Respondent began her studies there (albeit under the name of Burnett). And, as Respondent admitted during her deposition and in her interrogatory answers, she has been working in Texas as an LVN under her Texas license.[90]

The ALJ finds that Respondent's license was issued under (inadvertently) false representation and that Respondent has been practicing nursing under it. Therefore, Respondent violated Act section 301.451(3)(B) and discipline is authorized under Act section 301.452(b)(1). However, as explained above, since there is no evidence of fraud on Respondent's part in obtaining her Texas LVN license, the ALJ finds that discipline is not authorized under Act section 301.452(b)(5).

Furthermore, Mr. Diggs testified that Respondent's answers on her Texas license applications, representing that Quisqueya was an approved school in Florida for the type and timing of her studies, were "material misrepresentations" and the Board relies on that information when it considers an application. Mr. Diggs also testified that a nurse practicing without the requisite education presents a risk of harm to patients and public safety. As explained above, Respondent has been practicing without the requisite education.

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[90] Staff Ex. 28 at Interrogatory Answer 2; Staff Ex. 31 at 11-12; *see* Staff Ex. 25 at 217-18 ("Time Period" defined, Interrogatory 02); Respondent's Closing Brief (June 27, 2024) at 14.

The ALJ finds that Respondent's unintentional misrepresentation in her 2021 Application was a false or misleading answer in a licensure matter, which affected the decision to license her. The ALJ also finds Respondent's LVN practice without the requisite education to be conduct that may endanger a client's life, health, or safety. Under 22 TAC section 217.12(4) and (6)(I), these constitute *de jure* unprofessional conduct likely to deceive, defraud, or injure clients or the public. Therefore, the ALJ finds that Respondent violated Act section 301.452(b)(10).

D. RECOMMENDATION

The Operation Nightingale scheme to obtain nursing licenses via illegitimate diplomas and transcripts implicated numerous individuals. Operation Nightingale participants who are relevant to this case—Mr. Jean, Ms. Russ, and Ms. Napoleon —have been convicted of federal charges of conspiracy and fraud. Yet, even assuming that Burnett/Quisqueya was part of their fraudulent scheme, the evidence indicates that Respondent was an unwitting participant. She was not shown to have engaged in fraud, deceit, or intentional misrepresentation, and Staff's requested disciplinary action (revocation) is not warranted on that basis.

The ALJ notes Dr. Diggs's view that, as a result of Respondent's lack of education, she presents a risk of harm to patients and public safety if allowed to keep the License; but also recognizes there is no evidence Respondent has had any disciplinary issues or write-ups at any of the LVN jobs she has held since her licensure over two years ago. The Board had the option of temporarily, and summarily, suspending or restricting the License based on evidence that Respondent's continued practice "would constitute a continuing and imminent

threat to the public welfare."[91] Such a suspension can be implemented within a short timeframe; however, it does not appear to have been pursued against Respondent.

Nonetheless, the Board is charged with regulating the practice of nursing in Texas with the aim of ensuring public safety. Respondent's course was not approved and not substantially equivalent to a Texas-approved program; so, she lacks the required foundation. Respondent does not meet Board standards for licensure and for that reason the ALJ recommends that the Board revoke Respondent's License. While there is evidence that Respondent passed the NCLEX-PN on her first attempt and has been practicing nursing without issue since 2021, a vocational nurse can harm a patient if not properly trained, and the evidence does not establish that Respondent was properly trained for LVN nursing practice. Moreover, Respondent's nursing practice is likely to deceive the public into believing she is qualified. Importantly, Respondent cannot be certified as a graduate of any nursing program; therefore, if she continues practicing as an LVN, she will continue to violate Act section 301.451(3)(B) and commit unprofessional conduct that is likely to deceive, defraud, or injure a patient or the public.

While the Board's disciplinary matrix provides sanction tiers and levels for violations under Act section 301.452(b)(1), the situation posed by this case does not lend itself to the matrix's focus on violations of a rule or Board order. To the extent it is necessary, the ALJ concludes that Respondent's violation of Act section 301.452(b)(1) (through her violation of section 301.451(3)(B)) constitutes a

[91] Tex. Occ. Code § 301.455.

second tier, second level offense, and does not rise to tier three. It does not deal with probationary restrictions through a Board order; however, the violation is not a mere procedural Board rule. Sanction level two is appropriate as Respondent cannot complete the conditions to correct the violation, but instead will continue to be in violation until she is issued a lawful diploma and meets the eligibility requirements for practicing nursing.

As for Act section 301.452(b)(10), Respondent's violation (through her unprofessional conduct as defined in 22 TAC sections 217.12(4) and (6)(I)) constitutes a second tier, second level offense, and does not rise to tier three. Importantly, there is no evidence of harm to a patient or the public; however, Respondent's conduct does present a serious risk to patient or public safety. For these reasons, the ALJ cannot recommend that Respondent retain her License and recommends revocation.

VI. FINDINGS OF FACT

1. Mary Haika Wamalwa (Respondent) received a Licensed Practical Nurse (LPN) credential from the Florida Board of Nursing (Florida Board) on July 21, 2021. She applied to the Texas Board of Nursing (Board) for a Licensed Vocational Nurse (LVN, equivalent to LPN) license and was issued LVN License No. 1050553 (License) on November 23, 2021.

2. From January to December 2019, Respondent attended a nursing program in Houston, Texas at what was purported to be Burnett International College (Burnett) but later became Quisqueya School of Nursing, LLC (Quisqueya).

3. Quisqueya, a nursing program located in Florida and formerly known as Sunshine Academy, was approved by the Florida Board in 2012 as an in-person

practical nursing education program and was not approved for instruction online or outside of Florida.

4. The Florida Commission on Independent Education (FCIE) issued Quisqueya an order to close that became final on December 4, 2018, with teach-out of already enrolled students permitted until December 19, 2019.

5. Respondent applied to and was accepted by Burnett in December 2018.

6. After Respondent completed her classes at Burnett, but before she finished her payments, she learned that the school name changed to Quisqueya.

7. Respondent attended all her classes and clinicals in Texas; and all were through Burnett, not Quisqueya.

8. Respondent did not attend Jean's NCLEX.

9. Respondent took her final exit exam on December 18, 2019. She never received a certificate of completion, degree, or diploma from Burnett, Quisqueya, or any other nursing education program, despite her attempts to contact Burnett's school administrator.

10. Respondent believed Burnett and Quisqueya were legitimate nursing education programs and Florida-approved schools.

11. Respondent's class and clinical instructors through Burnett were both licensed nurses.

12. Respondent attended in-person classes three days a week, eight hours a day during her time at Burnett.

13. Respondent performed 220 hours of onsite clinicals at Brookshire Nursing and Rehabilitation (Brookshire), a nursing home, from August to November 2019; and completed an additional 280 clinical hours of activities in the simulation and skills laboratories, case studies, and computer simulations.

14. In total, Respondent completed 1,350 hours of course work, including classes in: Vocational Adjustment; Human Growth and Development; Body Structure and Function; Principles of Nutrition; Fundamentals of Nursing;

Medical/Surgical Nursing; Pharmacology; Maternal/Newborn Nursing; Pediatric Nursing; Geriatric Nursing; and Mental Health Concepts.

15. Respondent's classes and clinicals covered medical/surgical, maternal care, pediatric, geriatric, and mental health; and she learned specific skills in each area.

16. Skills Respondent learned at Burnett include: skin assessment; wound care; therapeutic communication with mental health patients; monitoring of blood sugar levels; suctioning; and medication calculation, measurement, and administration.

17. Respondent's clinical hours did not include care of any live pediatric or maternity patients.

18. Respondent kept hundreds of pages of notes and handouts from her course, and she took photos with her classmates at Brookshire.

19. Respondent never checked with the Board or Florida Board to see if her school was approved in Texas or approved by Florida to provide nursing classes in Texas, but she had no reason to inquire into the matter.

20. Burnett/Quisqueya, teaching in Texas, was not approved by the Board, accredited by a national nursing accreditation agency the Board determined to have acceptable standards, or approved by Florida Board.

21. Respondent never worked in Florida.

22. On July 20, 2021, Respondent took and passed the NCLEX-PN exam (for vocational or practical nurses).

23. Respondent swore in her 2020 and 2021 Texas LVN license applications that she graduated from Quisqueya in Florida.

24. Respondent did not complete the program of study that the Florida Board approved for Quisqueya.

25. School addresses are not entered into Texas LVN license applications by the applicant; instead, they are auto-generated when the school name is selected from a drop-down menu.

26. In her Texas LVN license applications, Respondent had no duty to clarify the auto-populated address of her school.

27. Respondent did not commit fraud in the representations she made to the Board for her License application.

28. Respondent's provision of misleading answers in her licensure applications, even though unintended, affected the Board's decision to license her.

29. Respondent's License was issued under false representation.

30. Respondent's education covered all five subject areas required by the Board for LVN nursing education to be considered substantially equivalent to a Texas-approved program (medical-surgical, maternal/child health, pediatrics, geriatrics, and mental health nursing).

31. Respondent's nursing program was not approved in Florida or Texas.

32. Respondent's nursing program was not substantially equivalent to a Board-approved program.

33. A licensed vocational nurse who is not properly trained can harm a patient.

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

35. Respondent has been practicing nursing in Texas under her License.

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

37. Respondent has been working as a Texas nurse for the past three to four years and has never received any complaints at work or from the Board or Florida Board.

38. Upon receiving notice that some Texas nurses, including Respondent, may be implicated in a federal investigation involving illegitimate or fraudulent diplomas, the staff (Staff) of the Board initiated a disciplinary action against Respondent and sought to revoke her License.

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

40. On December 19, 2023, Staff sent Respondent its Notice of Hearing and Formal Charges. On April 5, 2024, Staff sent Respondent its First Amended Formal Charges.

41. 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 a short, plain statement of the factual matters asserted in the complaint or petition filed with the state agency.

42. SOAH Administrative Law Judge Heather D. Hunziker convened the hearing on the merits via Zoom videoconference on April 22, 2024. Assistant Attorney General Ernest C. Garcia represented Staff. Respondent appeared and was represented by attorney Adiah A. Oreyomi. The record closed on July 11, 2024, with the filing of last closing brief.

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, including identifying the legal bases to show that Respondent's nursing program did not qualify her for licensure; and Respondent had the burden of establishing any mitigating evidence, including that she nonetheless was qualified. 1 Tex. Admin. Code § 155.427.

5. The standard of proof is by 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.).

6. Staff did not meet its burden of proof to show that Respondent fraudulently obtained a nursing diploma, license, or record in violation of Texas Occupations Code section 301.451(1).

7. Staff did not meet its burden of proof to show that Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(2) for fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing.

8. Staff did not meet its burden of proof to show that Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(5) for use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered.

9. Respondent practiced nursing under a license or record that was signed or issued unlawfully or under false misrepresentation, in violation of Texas Occupations Code section 301.451(3)(B).

10. Respondent is subject to discipline for violating chapter 301 of the Texas Occupations Code. Tex. Occ. Code § 301.452(b)(1).

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

12. Because Respondent's nursing program was not approved and because she did not work in Florida, she was not qualified for licensure by endorsement. 22 Tex. Admin. Code § 217.5(a)(1).

13. Respondent did not meet her burden of proof to show that her nursing education was substantially equivalent to a Texas-approved nursing program.

See Tex. Occ. Code §§ 301.157(d), .252(a), .260(a)(2); *see also* 22 Tex. Admin. § 217.2(a)(4)(B); *see generally* 22 Tex. Admin. Code ch. 214.

14. Because Respondent's nursing program was not approved, it was not a substantially equivalent education to a Texas-approved nursing program. 22 Tex. Admin. Code § 217.2(a)(4)(B)(i).

15. Because Respondent's nursing program was not substantially equivalent education to a Texas-approved nursing program, she did not qualify for licensure by examination. 22 Tex. Admin. Code § 217.2(a)(4)(B); *see also* Tex. Occ. Code § 301.157(d).

16. Respondent is not qualified for licensure. Tex. Occ. Code § 301.260(a)(2).

17. Respondent's unqualified practice of nursing constitutes unprofessional conduct likely to injure the public. 22 Tex. Admin. Code § 217.12(4).

18. Respondent's provision of misleading answers in her licensure, which affected the Board's decision to license her, constituted unprofessional conduct likely to injure the public. 22 Tex. Admin. Code § 217.12(6)(I).

19. Respondent is subject to discipline for her unprofessional conduct. Tex. Occ. Code § 301.452(b)(10).

20. The Board may take disciplinary action against Respondent. Tex. Occ. Code §§ 301.451(3)(B), .452(b)(1), (10); 22 Tex. Admin. Code § 217.12(4), (6)(I).

21. Respondent's violation of Texas Occupations Code section 301.451(3)(B) constitutes a second tier, second level offense, and does not rise to tier three. 22 Tex. Admin. Code § 213.33(b), (c).

22. Respondent's two types of unprofessional conduct under Texas Occupations Code section 301.452(b)(10) constitute second tier, second level offenses, and do not rise to tier three. 22 Tex. Admin. Code § 213.33(b), (c).

VIII. RECOMMENDATION

The Board should revoke Respondent's License.

Signed September 6, 2024.

Heather D. Hunziker

Presiding Administrative Law Judge

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

September 24, 2024

Ernest C. Garcia
Office of the Attorney General of Texas

VIA EFILE TEXAS

Adiah A. Oreyomi
Nurse Defense Firm, PLLC

VIA REGULAR MAIL

RE: Docket Number 507-24-01762.TBN; Texas Board of Nursing No. CX4792232852; *Texas Board of Nursing v. Mary Haika Wamalwa*

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