



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Patricia R. Marshall
Executive Director of the Board

DOCKET NUMBER 507-11-2565

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE §
NUMBERS 105866 and 534457 § **OF**
ISSUED TO §
THERESSIA L. (RADWAY) BUFFORD § **ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: **THERESSIA L. (RADWAY) BUFFORD**
1725 S. HOUSTON SCHOOL ROAD
LANCASTER, TX 75146

415 VINCENT
CEDAR HILL, TX 75104

SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 27-28, 2011, the Texas Board of Nursing (Board) considered the following items: (1) The Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD regarding the vocational and registered nursing licenses of Theressia L. (Radway) Bufford with changes; and (3) 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. No exceptions were filed by any party.

The Board has authority to review and modify the PFD in accordance with the

Government Code §2001.058(e). The Board, after review and due consideration of the PFD, Staff's recommendations, and the presentation by the Respondent during the open meeting, if any, has determined that Conclusion of Law Number Five (5) contains a technical error. Conclusion of Law Number Five (5) incorrectly references the Board's unprofessional conduct rule. Conclusion of Law Number Five (5) cites the Board's unprofessional conduct rule as 22 Tex. Admin. Code §217.12(A) and (H). This citation is incorrect in that it fails to identify the proper paragraph of the section. As such, the Board finds that the PFD should BE MODIFIED under the authority of §2001.058(e)(3) to correct this technical error in Conclusion of Law Number Five (5).

IT IS, THEREFORE, ORDERED THAT the PFD signed on June 17, 2011, is hereby MODIFIED under the authority of the Government Code §2001.058(e) for the reasons outlined above, in order to correct the technical error in Conclusion of Law Number Five (5).

Amended Conclusion of Law Number Five (5)

IT IS FURTHER ORDERED THAT CONCLUSION OF LAW NUMBER FIVE (5) is AMENDED and ADOPTED as follows:

5. Based on Findings of Fact Nos. 1 through 4, and 7 through 29, Respondent violated Tex. Occ. Code §301.452(b)(10) and 22 Tex. Admin. Code §217.12(6)(A) and (H).

IT IS FURTHER ORDERED THAT Findings of Fact Numbers 1 through 32 and Conclusions of Law Numbers 1 through 4 contained in the PFD of June 17, 2011, are ADOPTED without modification. Conclusion of Law Number Six (6) is not adopted by the Board, but is hereby re-designated as a recommendation. All proposed findings of fact and conclusions of law filed by any party or the ALJ not specifically adopted herein are hereby DENIED.

Conclusion of Law Number 6

The Board declines to adopt Conclusion of Law Number 6 because it is a recommended sanction and not a proper conclusion of law. The Government Code §2001.058(e) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ, or to vacate or modify an order issued by the ALJ if the Board determines that the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. The ALJ did not properly apply or interpret applicable law in this matter when she included her recommended sanction as a conclusion of law.

A recommendation for a sanction is not a proper conclusion of law. While it may be appropriate for the ALJ to recommend a sanction, it is ultimately up to the Board to determine what the appropriate sanction should be. Further, the mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation. Thus, the Board is not required to give presumptively binding effect to an ALJ's recommendation regarding sanctions in the same manner as with other findings of fact and conclusions of law. The Board, not the ALJ, is the final decision maker concerning sanctions. Once it has been determined that a violation of the law has occurred, the sanction is a matter for the agency's discretion. The choice of penalty is vested in the agency, not in the courts. Further, an agency has broad discretion in determining which sanction best serves the statutory policies committed to the agency's oversight. The propriety of a particular disciplinary measure is a matter of internal administration with which the courts should not interfere. See *Texas State Board of Dental Examiners vs. Brown*, 281 S.W. 3d 692 (Tex. App. - Corpus Christi 2009, pet. filed); *Sears vs. Tex. State Bd. of Dental Exam'rs*, 759 S.W.2d 748, 751 (Tex.App. - Austin 1988, no pet); *Firemen's & Policemen's Civil Serv. Comm'n vs. Brinkmeyer*, 662 S.W.2d 953, 956 (Tex. 1984); *Granek vs. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 781 (Tex.App. -

Austin 2005, pet. denied); *Fay-Ray Corp. vs. Tex. Alcoholic Beverage Comm'n*, 959 S.W.2d 362, 369 (Tex.App. - Austin 1998, no pet.).

Based upon adopted Findings of Fact Numbers 1 through 32 and Conclusions of Law Numbers 1 through 4 and amended Conclusion of Law Number Five (5), the Board's Disciplinary Matrix for a violation of the Occupations Code §301.452(b)(10), and the Board's rules, including 22 Tex. Admin. Code §213.33, the Board agrees that the Respondent's license should be revoked, and that the Respondent should be required to pay restitution before being eligible for licensure reinstatement. Further, the Board agrees with the ALJ that Teamwork Services was damaged at least in the amount of \$4,999.99. Thus, pursuant to applicable law, the Board re-designates Conclusion of Law Number 6 as a recommendation and adopts the ALJ's recommended sanction in this matter.

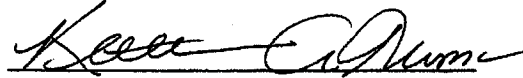
IT IS, THEREFORE, ORDERED THAT Permanent Certificate Numbers 105866 and 534457, previously issued to **THERESSIA L. (RADWAY) BUFFORD**, to practice nursing in the State of Texas be, and the same are hereby, REVOKED.

FURTHER, IT IS ORDERED THAT RESPONDENT SHALL make arrangements to pay restitution in at least the amount of four thousand nine hundred ninety nine dollars and ninety nine cents (\$4,999.99) to Teamwork Services in Grand Prairie, Texas. RESPONDENT SHALL cause Teamwork Services to submit written verification to the Board's office attesting to the arrangement for the payment of restitution prior to submitting a petition for reinstatement of her vocational and professional nursing licenses to the Board.

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 28th day of October, 2011.

TEXAS BOARD OF NURSING



KATHERINE A. THOMAS, MN, RN

EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-11-2565 (June 17, 2011).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 17, 2011

Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701

VIA INTER-AGENCY

RE: Docket No. 507-11-2565; Texas Board of Nursing v. Theressia L. Bufford; Certificate Nos. 534457 & 105866

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Suzanne Formby Marshall".

Suzanne Formby Marshall
Administrative Law Judge

SFM/Ls

Enclosures

XC: John Legris, ASSISTANT GENERAL COUNSEL, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - VIA INTER-AGENCY
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - (with 1 SOAH audio file) - VIA INTER-AGENCY
Theressia L. Bufford, 1725 S. Houston School Road, Lancaster, TX 75146 - VIA REGULAR MAIL

DOCKET NO. 507-11-2565

IN THE MATTER OF § BEFORE THE STATE OFFICE
VOCATIONAL NURSE §
CERTIFICATE NUMBER 105866 §
AND REGISTERED NURSE LICENSE § OF
NUMBER 534457 §
ISSUED TO §
THERESSIA L. BUFFORD § ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Board of Nursing (Staff/Board) brought this action seeking to revoke the vocational nurse and registered nurse licenses of Theressia L. Bufford (Respondent) based on allegations that she failed to comply with the standards of the Nursing Practice Act¹ and Board rules² during her work as a nurse consultant for Teamwork Services (Teamwork) in preparing a proposal to establish a vocational nursing program. The Administrative Law Judge (ALJ) finds that Staff proved two of the three charges against Respondent, and recommends that the sanction requested by Staff be imposed.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The parties did not challenge the issues of jurisdiction or notice. Those matters will be addressed in the findings of fact and conclusions of law. At the hearing, Staff dismissed charges 3, 4, and 5 against Respondent, contained in the Formal Charges (attached to the Notice of Hearing).³

On April 20, 2011, ALJ Suzanne Formby Marshall convened the hearing on the merits at the State Office of Administrative Hearings' (SOAH) Austin facility. Counsel for Staff was John F. Legris. Respondent appeared *pro se*. The hearing adjourned and the record closed the same day.

¹ TEX. OCC. CODE (Code) ch. 301 *et seq.* Specifically, Staff alleged that Respondent's actions violated § 301.452(b)(10) of the Code.

² 22 TEX. ADMIN. CODE (TAC) § 217.12(6)(A), (G), and (H).

³ Staff Ex. 4A. Charges 1, 2, and 6 were the subject of this hearing.

II. DISCUSSION

A. Allegations and Relevant Law

On April 21, 2006, Respondent contracted with Teamwork to prepare a proposal for a vocational nurse education program to be located in Grand Prairie, Texas. The proposal was to be submitted to the Board for approval. The contract anticipated approval of the program by the Board and the commencement of the program by December 2006.⁴

Staff alleges that Respondent: (1) submitted false documentation to Teamwork to verify that she had communicated with Board staff about the status of the proposal, when she had not;⁵ (2) misappropriated over \$50,000 from Teamwork by representing that she was qualified to implement a vocational nursing program;⁶ and (3) used the credentials "MSN," indicating that she had received a Master of Science in Nursing Administration, after graduating from a school that is not approved by the Texas Coordinating Board.⁷

Respondent's actions, Staff asserts, constitute unprofessional or dishonorable conduct that, in the Board's opinion, deceived, defrauded, or injured Teamwork and violated TEX. OCC. CODE (Code) § 301.452(b)(10). Further, Staff alleges that Respondent violated the Board's rule prohibiting unprofessional conduct by:

- Falsifying reports, client documentation, agency records or other documents;⁸
- Misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity;⁹ and

⁴ Staff Ex. 6, pp. 2-3.

⁵ Staff also alleged that Respondent misrepresented that she had verbally communicated with Board staff when she had not. Staff Ex. 4A.

⁶ Staff alleged the acts set forth in subsections (1) and (2) occurred from April 21, 2006, through June 2008.

⁷ The relevant time-frame for this allegation is from December 8, 2005, through July 2010.

⁸ 22 TAC § 217.12(6)(A).

⁹ *Id.* at (6)(G).

- Providing information which was false, deceptive, or misleading in connection with the practice of nursing.¹⁰

Two of the cited rules' violations involve actions taken "in connection with the practice of nursing."¹¹ The term "nursing" is defined as professional or vocational nursing.¹² Professional nursing and vocational nursing are defined in the Code.¹³

The Board must approve vocational nursing education programs in the state. It has adopted rules related to the establishment of a new vocation nursing education program.¹⁴ The rules provide that a proposal to establish a new vocational nursing educational program "shall be completed under the direction/consultation of a registered nurse who meets the Board-approved qualifications for a program director according to § 214.6."¹⁵ Those requirements include holding a current R.N. license; being actively involved in the practice of nursing for the past five years, preferably in supervision or teaching; having a degree or equivalent experience that

¹⁰ *Id.* at (6)(H).

¹¹ *Id.* at (6) (G) and (H).

¹² Code § 301.002(4).

¹³ *Id.* at (2) and (5).

Professional nursing is the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. It involves: (A) the observation, assessment, intervention, evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes; (B) the maintenance of health or prevention of illness; (C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist; (D) the supervision or teaching of nursing; (E) the administration, supervision, and evaluation of nursing practices, policies, and procedures; (F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at sites in which a registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157; (G) the performance of an act delegated by a physician under Section 157.052, 157.053, 157.054, 175.0541, 157.0542, 157.058, or 157.059; and (H) the development of the nursing care plan.

Vocational nursing is a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. It involves: (A) collecting data and performing focused nursing assessments of the health status of an individual; (B) participating in the planning of the nursing care needs of an individual; (C) participating in the development and modification of the nursing care plan; (D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual; (E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and (F) engaging in other acts that require education and training, as prescribed by board rules and policies, commensurate with the nurse's experience, continuing education, and demonstrated competency.

¹⁴ 22 TAC § 214.1 *et seq.* All citations to Board rules are to those in effect during the relevant time period.

¹⁵ 22 TAC § 214.3(a)(1)(B).

demonstrates competency and advanced preparation in nursing, education, and administration; and having five years of varied nursing experience since graduation from a professional nursing education program.¹⁶

B. Evidence

The evidentiary record consists of fifteen exhibits from Staff that were admitted into evidence.¹⁷ Staff called four witnesses: Olayide Ropo-Tusin, owner of Teamwork, Virginia Ayars, a Board nursing consultant for education,¹⁸ and Bonnie Cone, a Board nursing consultant.¹⁹ Respondent presented her own testimony and offered no exhibits. The evidence in this case is largely undisputed.

Respondent was issued Licensed Vocational Nurse (LVN) license number 105866, which was in a delinquent status at the time of the hearing. The Board also issued Registered Nurse (RN) license number 534457 to Respondent, which was in a current status at the time of the hearing.²⁰

1. Proposal

Teamwork is an organization that trains healthcare students in Grand Prairie, Texas. Ms. Ropo-Tusin was introduced to Respondent by a member of her church when Ms. Ropo-Tusin told him that she wanted to hire a nurse consultant to write a proposal for a vocational nurse training program.

¹⁶ 22 TAC §214.6(d)(7).

¹⁷ Staff Exs. 1, 2, 2A, 3, 4A, 5, 5A, 5B, 6, and 9-14.

¹⁸ Virginia Ayars has worked for the Board for nine years as a nursing consultant for education and a nurse investigator. She is an R.N. and also has B.S.N. and M.S.N. degrees in nursing, and she is currently working on a doctorate.

¹⁹ Ms. Cone is a L.V.N., an R.N., and she also holds an M.S.N. degree. Ms. Cone's testimony related to the issue of appropriate sanction in this case.

²⁰ The original issuance dates of the licenses are unclear.

On April 21, 2006, Ms. Ropo-Tusin executed a "Professional Consultant Agreement" with Respondent, engaging Respondent's services to prepare the proposal.²¹ The agreement stated that Respondent was an "RN, MSN, and CDONA,"²² who was being retained as a nursing consultant to:

- Obtain licensure to open a vocational nursing school;
- Serve as a liaison between the school and the Board of Nursing;
- Develop and/or review policies to reflect current required standards;
- Develop and/or review curriculum to reflect current required standards;
- Assist in setting up program, *i.e.*, selecting appropriate learning materials; and
- Identify and apply for appropriate funding sources.

The agreement stated that, in return for her work, Respondent would be paid \$40,000, in incremental payments until December 15, 2006, the expected completion date of the project. If the program did not open by December 31, 2006, Respondent would continue her work at a monthly rate of \$2,000, until the school was approved by the Board.²³

Ms. Ropo-Tusin testified that she believed Respondent was qualified to perform the work because Respondent told her that she had B.S.N. and M.S.N. degrees in nursing.²⁴ Respondent prepared a proposed project timeline that she gave to Ms. Ropo-Tusin in May 2006.²⁵ Ms. Ropo-Tusin said she thought the time-line was a reasonable one.²⁶ Based on that timeline,

²¹ Staff Ex. 6. The agreement was between Respondent and Ms. Ropo-Tusin d/b/a Teamwork Services – Teamwork Academy Health Education. According to Ms. Ropo-Tusin, Respondent drafted the professional consultant agreement.

²² The record does not reflect the meaning of this acronym.

²³ Staff Ex. 6, pp. 2-3.

²⁴ Respondent testified that she had never prepared a proposal before.

²⁵ Staff Ex. 2, p. 4.

²⁶ Ms. Ayars testified the timeline was unrealistic, but that it did reflect some essential components of a proposal.

Ms. Ropo-Tusin believed the proposal would be reviewed and submitted to the Board at its October 2006 meeting.²⁷

There is little evidence of the actual events that occurred between April and December 2006, the time period of the contract. Respondent claimed that she performed research, purchased books, assisted with designing the program's facility, and wrote the program drafts during this period.²⁸ Ms. Ropo-Tusin testified that in May or June 2006, she realized that the proposal would take longer to be approved by the Board than originally anticipated.

Respondent prepared the proposal and submitted it to Betty Sims, a nurse consultant for the Board, for review on October 6, 2006.²⁹ She also provided a copy to Ms. Ropo-Tusin.³⁰ Additionally, a check for \$75 was submitted with the proposal as an application fee. On November 1, 2006, Ms. Sims sent Respondent a letter notifying her that the \$75 application fee was being refunded because the current fee was \$500.³¹ Ms. Ropo-Tussin testified that she would have expected Respondent to know the current application fees of the Board. However, she provided a certified check for \$500 to Respondent on November 3, 2006, that was forwarded to the Board.

On January 18, 2007, Ms. Sims notified Respondent that the proposal had been reviewed and the reviewers made extensive comments, which she forwarded to Respondent.³² Ms. Sims

²⁷ According to Ms. Ropo-Tusin, she had previously submitted a draft proposal of over 500 pages to Betty Sims, a Board nurse consultant. Ms. Sims encouraged Ms. Ropo-Tusin to retain a nurse consultant to assist her. Ms. Ropo-Tusin gave Respondent four binders of materials that she had collected with the intent that Respondent would contact Ms. Sims and continue to work on that proposal. Respondent told Ms. Ropo-Tusin that Ms. Sims said that the time period for the proposal had lapsed and a new proposal was required.

²⁸ Staff Ex. 5B, p. 2.

²⁹ Staff Ex. 9. The proposal consisted of 166 pages. It identified Respondent as an RN, BSN, MSN (Consultant). It further identified Respondent as a contract consultant who will become the program director. See p. 12. Ms. Ayars testified that the proposal was submitted on October 31, 2006.

³⁰ Ms. Ropo-Tusin testified that the proposal was much less than the 500-page proposal she had drafted and it was addressed to the Board of Vocational Nursing instead of to the Board of Nurse Examiners. She did not otherwise discuss inadequacies with the proposal.

³¹ Staff Ex. 6, p. 5.

³² Staff Ex. 5A, p. 14. According to Ms. Ayars, the two staff reviewers were Ms. Sims and Dorothy Joy. Respondent did not receive the original e-mail with comments so Ms. Sims sent them to her again, on January 23, 2007.

offered to discuss the comments before Respondent made revisions, through either a telephonic or in-person meeting.³³

Ms. Ayars, who reviewed the proposal at a later date, described it as "not acceptable" and testified that it contained many deficiencies. For example, it lacked TWC³⁴ approval; there was no documented research regarding the need for the program in the community; there was a lack of clinical affiliation agreements to provide hands-on programs; there were no clinical contracts; no dean or director was listed; the syllabi needed clarification; faculty members were not identified; and there was no five year budget projection, among other things.

There was a telephone conference between Ms. Sims, Ms. Joy, and Respondent in February 2007, to further discuss the comments.³⁵ After the conference, Ms. Ropo-Tusin testified that Respondent prepared a list of issues of concerns from the Board and a Plan of Corrections which she submitted to Ms. Ropo-Tusin.³⁶ Respondent told Ms. Ropo-Tusin that Teamwork needed to prepare compliance documents, student surveys, and a budget as part of the proposal.³⁷

Ms. Ayars disputed Respondent's testimony that the list of concerns arose from the Board's staff's comments. She testified that some of the items on the list of concerns prepared by Respondent were not items that would be addressed by Board staff in their comments. These included issues related to budget, program cost, and use of the NCLEX exam.³⁸ Further, she said that the Board did not mandate a survey of students. After the February 2007 telephone conference, there was no further activity on the proposal with the Board until August 2007.³⁹

³³ Ms. Sims was no longer employed by the Board at the time of the hearing, and she did not testify at the hearing.

³⁴ Texas Workforce Commission.

³⁵ Testimony of Ms. Ayars.

³⁶ Staff. Ex. 6, pp. 10-11. According to Ms. Ropo-Tusin, she was not given a copy of the comments on the proposal and she saw them for the first time at hearing.

³⁷ Testimony of Ms. Ropo-Tusin.

³⁸ A review of Staff's comments to the proposal, however, indicate concerns regarding the sources of funding and items that were not included in the budget; concerns about salary totals for the director and faculty; concern about the decrease in the salary budget for the following year; and use of the NCLEX-PN test. Staff Ex. 5A.

³⁹ Testimony of Ms. Ayars.

According to Respondent, she experienced major life issues after January 2007 that affected her ability to complete her work on the proposal. Respondent said she was unexpectedly hospitalized in March 2007 during an eight-week illness.⁴⁰ Additionally, she had surgery in June. Both Respondent and Ms. Ropo-Tusin testified that Ms. Ropo-Tusin was told by Respondent of her illness.

Respondent claimed that she spoke to Ms. Ayars in late July 2007 who told her that Ms. Sims was no longer with the Board and that she would assist Respondent with making sure the proposal would be ready for Board approval. Respondent testified that she had been told by Ms. Sims that the Board could conduct a site visit with 24 hours' notice to the program.⁴¹ According to Respondent, Ms. Ayars told her that a site visit would have to be made, but she did not say when it would occur.⁴² With respect to survey visits and the possibility of a 24-hour notice prior to the visit, Ms. Ayars said that the visits were scheduled far in advance, usually four to six weeks. She said that there were no unscheduled 24-hour site visits and that a site visit is not done until a Board meeting is targeted. Then, Staff schedules a site visit about six weeks before that Board meeting. Ms. Ayars testified that there had been no discussion with Respondent about a survey visit.

However, Ms. Ropo-Tusin testified that Respondent told her that Teamwork needed to prepare the school for an on-site survey. Ms. Ropo-Tusin said she spent \$25,000 in savings to prepare for the survey. She bought 15 computers, 3 semi-electric hospital beds, tables, a mannequin, software, desk copy books from publishers and spent about \$27,000. She said that Teamwork had to expand and renovate the facility. These expenditures were in addition to the money already paid to Respondent.

⁴⁰ Staff Ex. 5, p. 2. (Letter from Respondent to Board investigator, dated September 6, 2008). Respondent's letter stated that the surgery was in March 2006, but she noted that it was in March 2007 in subsequent communications with the Board. Staff Ex. 5A and 5B.

⁴¹ Her testimony is supported by page 7 of Staff Ex. 6 (a fax cover sheet that was sent to Respondent when the \$75 application fee was returned). The sheet indicates that "BNE staff, as part of the New Nursing Education Program Approval Process, may make a survey visit of the proposed nursing education program with 24-hour notice."

⁴² Staff Ex. 5.

On August 3, 2007, Ms. Ayars sent an e-mail to Respondent, acknowledging Respondent's telephone call to request an appointment to discuss the status of the proposal. Ms. Ayars notified Respondent that a nursing education consultant would be available to meet with Respondent, either telephonically or face-to-face, during the week of August 13, 2007.⁴³ During August of 2007, Ms. Ropo-Tusin was placed on bed rest during her pregnancy. However, she said she was able to receive phone calls and she received e-mails from Respondent about the proposal.

Respondent conceded that she did not follow-up with Ms. Ayars for a meeting in August 2007. However, she sent a number of e-mails to Ms. Ropo-Tusin that indicated she was actively working on the proposal and that she was in communication with Ms. Ayars, who had requested numerous changes to the proposal. For example, on August 29, 2007, Respondent requested that Ms. Ropo-Tusin distribute a survey to interested students for completion. The survey was to demonstrate a need for the program.⁴⁴ Ms. Ropo-Tusin notified Respondent on September 23, 2007, that the surveys were ready to be picked up. On September 25, 2007, Respondent sent the following e-mail to Ms. Ropo-Tusin:

I just got your email. I will be by tomorrow afternoon. Virginia now has me making more changes from her perspective. Duh! But that [sic] ok – I'll keep working until we give them what they want! See ya, I'm in class.⁴⁵

Ms. Ropo-Tusin said that, based on the e-mails from Respondent, she had the impression Ms. Ayars was a perfectionist who insisted on many changes. She testified that she believed the Board staff was making progress on the proposal difficult because of their demands, based on the communications from Respondent. Ms. Ayars denied that there was communication with Respondent on Sept. 25, 2007, as reported by Respondent to Ms. Ropo-Tusin.

In October 2007, Ms. Ropo-Tusin was admitted to the hospital. On October 12, 2007, a couple of days after being discharged from the hospital, Ms. Ropo-Tusin e-mailed Respondent to thank her for picking up the surveys and asking if Respondent had any information for her about

⁴³ Staff Ex. 6, p. 34.

⁴⁴ Staff Ex. 6, p. 34.

⁴⁵ Staff Ex. 6, p. 37.

the program. Respondent replied on October 15, 2007, saying that the Board had all the information.⁴⁶ Respondent reported that Ms. Ayars said she could not promise a site visit "before the boards," but she would make Teamwork's proposal a top priority before the holidays. Respondent also claimed that the Board was back-logged and short-staffed. Respondent said she requested a January 2008 opening because of the numerous delays on the Board's part.⁴⁷

Ms. Ayars disputed Respondent's comment that the Board had all the information it needed by October 2007, saying that the initial proposal was incomplete. She noted that Board staff made sure that the proposals were in "pristine condition" before submitting them to the Board for approval.

Respondent admitted that there was little communication between her and Ms. Ropo-Tusin from March through October 2007, due to her illness, an out of town visit by Ms. Ropo-Tusin, and Ms. Ropo-Tusin's hospitalization.⁴⁸ However, Respondent claimed that she continued to work on the proposal. In November 2007, Respondent's son was diagnosed with HIV. In December 2007, Respondent's husband became ill and was hospitalized. In April 2008, her father-in-law died suddenly, and her husband was diagnosed with cancer, receiving chemotherapy and radiation throughout the summer.⁴⁹

On December 14, 2007, Ms. Ropo-Tusin sent an e-mail to Respondent, asking if Ms. Ayars had sent a compliance form to her, referring to a previous communication from Respondent. Respondent replied by e-mail on the same day, saying that she had "just got off of the phone with the board. She [Ms. Ayars] has been out of the office and will be returning this afternoon. She did not keep her word. The board said that the checklist is only a guide and does not have to be signed."⁵⁰ Ms. Ayars strenuously disputed the contents of this e-mail. She testified that there had been no communication between her and Respondent. She also said that the Board did not have a compliance form.

⁴⁶ Staff Ex. 6, p. 39.

⁴⁷ Staff Ex. 6, p. 39.

⁴⁸ Staff Ex. 5. Ms. Ropo-Tusin expressed frustration at the lack of communication in e-mails to Respondent. Staff Ex. 6, p. 40.

⁴⁹ Staff Ex. 5.

⁵⁰ Staff. Ex. 6, p. 41.

Ms. Ropo-Tusin sent an e-mail to Respondent on December 26, 2007, inquiring whether Respondent had heard anything from the Board. She asked Respondent to request a face-to-face meeting and to become more aggressive so that the program could become a priority for the Board.⁵¹ Respondent replied and said that she had attempted to contact Ms. Ayars, but she was out of the office. She told Ms. Ropo-Tusin that the “[t]hey appeared frustrated that I am constantly calling” and she expressed concern about irritating the Board. Ms. Ropo-Tusin expressed thanks to Respondent and agreed that they should not further irritate the Board. She stated, “I am only going along with you based on the information you received from them.”⁵² Respondent sent an e-mail saying that she understood Ms. Ropo-Tusin’s frustration. She said she had tried to contact Ms. Ayars again, but she was out of the office.⁵³

During January 2007, Respondent sent additional e-mails to Ms. Ropo-Tusin, saying that she was having difficulty contacting Ms. Ayars.⁵⁴ On January 25, 2008, Respondent stated that Ms. Ayars “finally called me yesterday evening.” Claiming that the Board could not find the last proposal, Respondent asked Ms. Ropo-Tusin whether she had a copy of picture photos that had been damaged on Respondent’s flash drive, to re-submit to the Board.⁵⁵ Respondent claimed that she had requested a meeting with Ms. Ayars in February.

Ms. Ayars said she checked her Day Planner for the days that Respondent had claimed that she was out of the office and the Day Planner reflected that she had been in the office those days. Further, Ms. Ayars testified that there had been no communication between her and Respondent during this time period. She also denied that there would have been any irritation from the Board to a consultant who was in the process of submitting a proposal, stating that it was her job to work with proposal authors. Ms. Ayars adamantly denied that she had any contact with Respondent, as Respondent claimed in her e-mails. Ms. Ayars noted that the Teamwork Services proposal was listed as inactive in the Board’s records as of September 1, 2007.

⁵¹ Staff Ex. 6, p. 43.

⁵² Staff Ex. 6, p. 44.

⁵³ Staff Ex. 6, p. 44.

⁵⁴ Staff Ex. 6, pp. 45-47.

⁵⁵ Staff Ex. 6, p. 47.

According to Ms. Ropo-Tusin, she continued to believe Respondent and said there was no reason to doubt whether she was really working on the proposal until December 2007. However, when the project was still not approved and she had not been shown anything tangible indicating progress, she began to have doubts. In January 2008, Ms. Ropo-Tusin called Ms. Ayars at the Board. She was apologetic for the call, saying that she knew it was unprofessional to check on Respondent's work with the Board. Ms. Ayars told her that the last communication she had had with Respondent was in April 2007. She said that there had been a request for a face to face meeting in August 2007, but she never heard back from Respondent. At that point, Ms. Ropo-Tusin realized that there had been no communication between the Board and Respondent from August 2007 through January 2008.

Ms. Ayars testified that she was surprised when Teamwork submitted a new proposal to the Board in December 2009. Ms. Ayars said she sent an e-mail to the education consultants noting that the proposal had been active several years ago and "just reappeared today."⁵⁶ The new proposal was submitted almost two years after the proposal prepared by Respondent. The new proposal, Ms. Ayars said, meets the essential elements of an acceptable proposal and would soon be considered by the Board. She said she had had several visits with Ms. Ropo-Tusin and the author as they worked on the proposal. She noted that a site visit was held in March 2011.

Ms. Ropo-Tusin testified that she had to start over with the proposal after realizing that Respondent was not going to complete the project. Ms. Ropo-Tusin testified she anticipated that the program would be approved by the Board at its April 2011 meeting. According to Ms. Ropo-Tusin, the submitted proposal was approximately 357 pages, excluding the student and faculty handbook.

By the end of December 2006, Respondent had been paid \$40,000 for her work. Ms. Ropo-Tusin claimed that she paid Respondent an additional \$10,000 in accordance with the agreement. After that, according to Ms. Ropo-Tussin, Respondent was paid \$2,000/month through most of 2007.⁵⁷

⁵⁶ Staff Ex. 12.

⁵⁷ Staff submitted evidence that Respondent was paid an additional \$8,000 by Ms. Ropo-Tusin. Staff Ex. 6, pp. 12, 13, 15, and 17. Staff alleges that over \$50,000 was paid to Respondent. Respondent did not contest this

2. Credentials

With respect to the M.S.N. degree of Respondent, Ms. Ayars testified that Respondent received the degree from Rochville University. She said this school was listed by the Texas Higher Education Coordinating Board as a school whose degree was illegal to use in Texas.⁵⁸ Ms. Ayars testified that Respondent represented herself as holding an M.S.N. degree to the Board and to Ms. Ropo-Tusin.

3. Sanctions

Ms. Cone is familiar with the Nursing Practice Act and the Board's rules, regulations and policies regarding disciplinary matters. According to Ms. Cone, Board Rule § 213.27 applies to consideration of good professional character which is relevant in cases involve allegations of fraud or unethical conduct. It states that good professional character is an integrated pattern of personal behaviors, such as honesty, accountability, trustworthiness, reliability, and integrity. She specifically noted that the factors listed in § 213.27(b)(2)(A-D) were relevant to the consideration of Respondent's disciplinary sanction. Those factors are:

- (A) able to distinguish right from wrong;
- (B) able to think and act rationally;
- (C) able to keep promises and honor obligations; and
- (D) is accountable for his or her own behavior.

Ms. Cone testified that Respondent engaged in fraud, both in the course of contracting with Teamwork, preparing the proposal, representing that she was engaged in communications with the Board, and in stating her credentials. She testified this is a dishonest behavior that could occur when working with patients. Further, she said that this conduct is of concern to the Board because there is a question as to whether it would be repeated. She noted that Respondent's behavior included factors of premeditation, remorse, and restitution. Observing that Respondent

allegation. Ms. Ropo-Tusin testified that the money paid to Respondent came from her personal savings and a private business unrelated to Teamworks.

⁵⁸ Staff Ex. 14.

received payment and sent e-mails to Ms. Ropo-Tusin, indicating that work was progressing but knowing that it was not, Ms. Cone testified that Respondent showed premeditation for her actions. Further, she testified that Respondent did not show remorse, or an intent to make restitution, even after she had failed to produce a Board-approved proposal. In Ms. Cone's professional opinion, revocation of Respondent's licenses is an appropriate sanction.

In discussing Respondent's conduct as it related to the Board's disciplinary matrix, Ms. Cone noted that the violation of Code § 301.452(b)(10) should be considered as a Third Tier Offense in this case because it involved harm to the public, repeated acts over a period of time, a large sum of money, multiple events, and it showed a lack of integrity. She said that Sanction Level I supported revocation of the nursing license. And, the lack of restitution or significant mitigating circumstances, the fact that the conduct continued over a two-year period, and the level of financial gain supported her recommendation of revocation. Consistent with the disciplinary matrix sanction, Ms. Cone testified that Respondent, before re-applying for licensure, should be required to make restitution to Ms. Ropo-Tusin.

Respondent apologized to Ms. Ropo-Tusin, saying that she was so sorry "for how things fell through." She said that she "dropped the ball in January 2007" and admitted that she did not follow-up with Ms. Ayars. She acknowledged that Ms. Ropo-Tusin needed restitution, but said she could not make restitution without her nursing license. She noted that she had been a nurse for 25 years.

Claiming she took responsibility for her actions in November 3, 2010, when she wrote a letter of explanation to the Board,⁵⁹ Respondent said that she was sad and sorry for what had happened. She requested that the Board show her mercy.

C. ALJ's Analysis and Recommendation

Staff alleged that Respondent violated Code § 301.452(b)(10) by engaging in unprofessional or dishonorable conduct. Staff's allegations are set forth in three charges of the

⁵⁹ Staff Ex. 5A.

Formal Charges. With respect to Charge I, Staff met its burden of proving the violation. Staff alleged that Respondent submitted false documentation to Teamwork in an attempt to verify communication with staff of the Board regarding implementation of a vocational nursing program when the communication did not actually occur. The evidence is compelling on this charge. Staff introduced into evidence numerous examples of e-mails in which Respondent told Ms. Ropo-Tusin that she was in communication with Ms. Ayars and other members of the Board about the proposal when she was not.

On one occasion, Respondent told Ms. Ropo-Tusin that she needed to prepare the facility for a site visit, causing Ms. Ropo-Tusin to spend thousands of dollars on equipment, computers, beds, and other items. There was no evidence that Respondent had actually been told to prepare the facility for a site visit by anyone at the Board at this juncture. Instead, this action is contradicted by Ms. Ayars' testimony that a site visit occurs once a proposal has been scheduled for presentation to the Board. In August 2007, Respondent told Ms. Ropo-Tusin, in an e-mail, to distribute surveys to students to demonstrate a need for the nursing education program. Ms. Ropo-Tusin said she thought that the Board required the surveys; however, Ms. Ayars said that it did not.

Respondent's September 25, 2007, e-mail was particularly egregious. Respondent claimed that Ms. Ayars had told her to make more changes to the proposal. Respondent disparaged Ms. Ayars in the e-mail and gave Ms. Ropo-Tusin the impression that Ms. Ayars was being demanding. Ms. Ayars denied that this communication with Respondent ever occurred; Respondent did not refute Ms. Ayars' testimony. In October 2007, Respondent again claimed that she had talked to Ms. Ayars. Respondent claimed that she had sent all information to the Board and told Ms. Ropo-Tusin that the Board was back-logged and short-staffed. Again, Ms. Ayars disputed any communication with Respondent.

Likewise, the evidence also establishes that Respondent misrepresented to Teamwork that she had verbally communicated with Board staff on numerous occasions regarding implementation of a vocational nursing program. Most of these communications were reflected

in the e-mails discussed earlier, in which Respondent told Ms. Ropo-Tusin that she had talked to Ms. Ayars and others at the Board, when those conversations had not occurred.

Respondent told Ms. Ropo-Tusin that she had made numerous calls to the Board, seeking to speak with Ms. Ayars, but she claimed Ms. Ayars was unavailable. In fact, Ms. Ayars was at work on those days, but Respondent did not actually call the Board to speak to her as she claimed. Further, Respondent told Ms. Ropo-Tusin that Ms. Ayars had not kept her word, giving Ms. Ropo-Tusin the impression that Ms. Ayars had become an obstacle that was preventing the proposal from progressing.

The purported communications with Ms. Ayars and others at the Board were fabricated by Respondent to make it appear that she was actively working on the proposal when, in fact, she was not. Ms. Ayars' testimony that the communications with Respondent had not occurred and that she was in the office when Respondent claimed she was not was credible and persuasive. Respondent's "communications" with Ms. Ayars were lies that were designed to deceive and defraud Ms. Ropo-Tusin and Teamwork by concealing the truth---that she had failed to comply with the terms of her contract with Teamwork. Instead, Respondent failed to continue her work and make the revisions necessary to the proposal so that it would meet the Board's requirements for approval. Rather than taking responsibility for her failure to complete the proposal, whether due to her lack of knowledge or due to the many personal hardships she faced during this time, Respondent blamed the delays on the Board and its staff members. This conduct is deceitful and resulted in further expenditures of time and money by Teamwork.

Based on the evidence presented, the ALJ finds that Staff met its burden in providing that Respondent engaged in unprofessional conduct and violated Board rule §217.12(6)(A) and (H).⁶⁰

In Charge II, Staff alleged that Respondent misappropriated \$50,000 from Teamwork by misrepresenting her qualifications to implement a vocational nursing program that was never

⁶⁰ A violation of Board Rule § 217.12(6)(H) requires that the false, deceptive, or misleading information be provided in connection with the practice of nursing. Because the Board's rule required a proposal to be prepared by an R.N. who met the Board's qualifications for a program director, the ALJ finds that there is a connection to the practice of nursing from Respondent's actions in contracting with Teamwork and in working on the proposal.

established.⁶¹ The evidence established that Respondent received payment to prepare a proposal that was to be approved by the Board and to implement the program. Respondent drafted a proposal that was submitted to the Board in October 2006, consistent with the time-line set forth in the contract with Teamwork. Respondent continued to work on the proposal from December 2006 until approximately April 2008.

As discussed below, Respondent did misrepresent her credentials by claiming to have an M.S.N. degree. While Ms. Ropo-Tusin thought that Respondent had an advanced nursing degree, an M.S.N. was not required by the Board for a person submitting a proposal for an education program. The Board only required an R.N. and Respondent was an R.N. While there was evidence that Ms. Ropo-Tusin relied on Respondent's credentials in hiring her for the project, there is no evidence that Respondent misrepresented her credentials for the sole purpose of taking money from Teamwork without producing the proposal. Staff did not present evidence that defined the term "misappropriated." The plain meaning of the word "misappropriate" means to appropriate wrongly, as by theft or embezzlement.⁶² In this case, Respondent misrepresented her credentials, but the evidence establishes that she attempted to prepare the proposal. Although her work was substandard, that does not negate the fact that she performed services pursuant to the contract. Whether she should have returned a portion of the monies paid to her when she could not complete the project is a different question. Consequently, the ALJ finds that Respondent did not misappropriate \$50,000 from Teamwork by misrepresenting her qualifications. The ALJ determines that Staff failed to prove Charge II as set out in its Formal Charges.

With respect to Charge VI, Staff clearly established that Respondent violated the Code and 22 TEX. ADMIN. CODE § 217.12(6)(H) when she represented to Teamwork that she was a qualified nurse consultant, with B.S.N. and M.S.N. degrees, leading them to contract with her to prepare the proposal for a vocational nurse education program to be submitted to the Board. Respondent prepared the professional consultant agreement with Teamwork, in which she identified herself as holding these degrees. Further, Respondent represented to the Board that

⁶¹ Staff claimed this violated Board Rule § 217.12(6)(A), (G), and (H).

⁶² *Merriam-Webster.com*; <http://www.merriam-webster.com/dictionary/misappropriate>.

she had an M.S.N. degree on the proposal that she submitted in October 2006.⁶³ Respondent's use of a fraudulent degree deceived, defrauded, and injured Teamwork. The M.S.N. degree is an advanced nursing degree; a person with that degree has significant knowledge and expertise in nursing. Ms. Ropo-Tusin relied upon Respondent's educational background as part of her decision to contract with her to prepare the proposal. While an M.S.N. degree is not required to prepare a proposal of this type, it is clear from Ms. Ropo-Tusin's testimony that she relied on Respondent's credentials, including her degrees, in retaining her for the project. Further, she maintained confidence in Respondent's ability to carry out the job, in part, because of Respondent's credentials.

It is undisputed that Respondent's M.S.N. degree is from Rochville University, a school that is not recognized as having authority to award degrees in the state of Texas.⁶⁴ Not only is the degree considered to be a fraudulent or substandard degree by the Texas Higher Education Coordinating Board, it is also a Class B misdemeanor to use such a degree to obtain employment or to practice an occupation.⁶⁵ Based on the evidence presented, Staff established the violation alleged in Charge VI of its Formal Charges.⁶⁶

Because Staff proved two violations of the Code and Board rules, the ALJ addresses the appropriate sanction to be imposed in this instance. As Ms. Cone testified, the Board has adopted factors that are to be considered in imposing sanctions.⁶⁷ These factors are set forth in a Disciplinary Matrix.⁶⁸ According to Ms. Cone, Respondent's violations should be considered as a Third Tier Offense because Respondent engaged in repeated acts of unethical behavior which resulted in harm to Teamwork. Further, she said that Respondent's actions constituted financial exploitation or unethical conduct resulting in a material or financial loss to Teamwork in excess of \$4,999.99. The ALJ finds that the evidence supports consideration of Respondent's violations as Third Tier Offenses.

⁶³ Staff Ex. 9.

⁶⁴ Staff Ex. 14.

⁶⁵ Staff's Ex. 14.

⁶⁶ Staff's Ex. 4A.

⁶⁷ 22 TAC § 213.33.

⁶⁸ 22 TAC § 213.33(b).

First Tier Offenses refer to isolated violations with no adverse effects. While a Second Tier Offense includes repeated acts of unethical behavior, which occurred in this case, it does not specifically contain a reference to the behavior resulting in economic loss, as in this case. Consequently, Respondent's violations constitute a Third Tier Offense. The appropriate sanction for this level of offense is revocation of a nursing license, as stated by Ms. Cone.⁶⁹ Further, the sanction requires restitution by the licensee before the licensee can have his or her license reinstated. In this case, Ms. Cone testified that Respondent should make restitution to Teamwork.

The issue of restitution is problematic, however. Staff seeks restitution of \$50,000, the amount it says was paid to Respondent. The evidence only established payment of \$48,000; however, Respondent did not dispute that she had been paid \$50,000. Of that amount, \$40,000 was paid to Respondent for working on the proposal from May through December 2006. Respondent did work on the proposal and submitted it to the Board in October 2006. While the proposal was termed "inadequate" by Ms. Ayars, there is no evidence that Respondent's efforts were far short of what would have been expected of a nurse consultant in preparing a similar proposal. Ms. Ropo-Tusin's only complaint about the proposal was that it was shorter in length than the proposal she had drafted, and that Respondent sent an application fee in the wrong amount. She did not have substantive complaints about the proposal or Respondent's work, specific to the contents of the proposal.

Further, it appears that the time-line for the project was an unrealistic one from the beginning, according to Ms. Ayars. The ALJ notes that the current Board rule relating to the submission of proposals for vocational nursing programs states that it will take at least one year for the proposal to be approved.⁷⁰ The fact that the proposal was not approved by the Board by December 2006 does not appear, in itself, indicative of a poorly prepared proposal.

The ALJ notes that Ms. Sims and Ms. Joy made substantial comments to the proposal, indicating that much more work was needed before the proposal would be ready for submission

⁶⁹ Sanction Level II is inapplicable because it provides for an emergency suspension of a nursing license for a violation that is a continuing and imminent threat to the public health and safety. This is not the situation here.

⁷⁰ 22 TAC § 214.3.

to the Board. While this may indicate that the proposal was substandard at that time, the ALJ notes that the contract between Respondent and Teamwork did not contain expectations regarding quality measures for the proposal. In fact, the contract anticipated that it might be necessary for Respondent's work to continue past December and established a reduced payment rate for her.

Based on Ms. Ropo-Tusin's testimony that she had to have the proposal re-done and that she was unable to rely upon anything prepared by Respondent, it would seem that Teamwork incurred additional expenses in the preparation of the new proposal. However, those expenses were not presented into evidence. Consequently, while restitution is appropriate, the evidence does not clearly establish the appropriate amount of restitution in this case. Respondent did perform work for Teamwork that resulted in a proposal. Some amount of compensation for that work is reasonable. Determining that amount, however, is difficult based on the evidence. Respondent's conduct was egregious and displayed, as noted by Ms. Cone, an inability of Respondent to keep her promises and honor obligations, as well as demonstrate accountability for her behavior.

III. RECOMMENDATION

In conclusion, as discussed above, Staff established that Respondent engaged in unprofessional and dishonorable conduct. The ALJ recommends that Respondent's nursing licenses be revoked and that she be required to make restitution to Teamwork in an amount to be determined by the Board.

IV. FINDINGS OF FACT

1. Theressia L. Bufford (Respondent) holds licensed vocational nurse (LVN) license number 105866 and registered nurse (RN) license number 534457. Her LVN license was in delinquent status at the time of the hearing.
2. Olayide Ropo-Tusin is the owner of Teamwork Services (Teamwork), an organization that trains healthcare students in Grand Prairie, Texas.

3. On April 21, 2006, Ms. Ropo-Tusin executed a "Professional Consultant Agreement" (Agreement) with Respondent, engaging Respondent's services to prepare a proposal to establish a vocational nurse training program in Grand Prairie, Texas.
4. The proposal to be prepared by Respondent would be submitted to the Texas Board of Nursing (Board) for approval.
5. The Agreement, prepared by Respondent, stated that Respondent was an R.N., M.S.N., and CDONA.
6. Respondent's M.S.N. degree was a fraudulent degree from Rochville University that is considered to be an illegal degree by the Texas Higher Education Coordinating Board.
7. The Agreement provided for payment to Respondent of \$40,000, for her work performed through December 15, 2006, the expected completion date of the project. Respondent was to be paid \$2,000 per month for her work after December 31, 2006.
8. Ms. Ropo-Tusin believed that Respondent was qualified to prepare the proposal based on her nursing degrees.
9. Between April and October 2006, Respondent worked on the proposal.
10. On October 6, 2006, Respondent submitted the proposal to the Board, along with an application fee of \$75.
11. The application fee was returned by the Board because it was the incorrect amount. The correct amount was \$500. Respondent sent a check from Teamwork in the amount of \$500 for the application fee.
12. By December 2006, Teamwork had paid Respondent \$40,000 for her services in preparing the proposal.
13. Betty Sims, a Board nurse consultant, reviewed the proposal, along with Dorothy Joy, another nurse consultant with the Board. They made numerous comments to the proposal.
14. On January 18, 2007, the comments of Ms. Sims and Ms. Joy were sent to Respondent. Respondent did not share a copy of the comments with Ms. Ropo-Tusin.
15. In February 2007, a telephone conference was held with Respondent, Betty Sims, and Dorothy Joy to discuss their comments.
16. After the telephone conference, Respondent told Ms. Ropo-Tusin that the Board had a number of concerns about the proposal that required additional information and work.


17. Sometime after January 2007, Respondent experienced a series of personal events, including illness, that affected her ability to complete the proposal. These events continued until 2008.
18. Respondent told Ms. Ropo-Tusin of her illness in March 2007.
19. Between March 2007 and February 2008, Respondent sent e-mails to Ms. Ropo-Tusin indicating that she had communicated with Virginia Ayars at the Board regarding the proposal. Additionally, there were verbal conversations with Ms. Ropo-Tusin discussing Respondent's communications with the Board.
20. Respondent did not communicate with Ms. Ayars or the Board after February 2007, until she requested a meeting with Ms. Ayars in August 2007.
21. Respondent's representations to Ms. Ropo-Tusin that the Board was continuing to make changes to the proposal and require additional work from Respondent and Teamwork were false.
22. After talking to Ms. Ayars in August 2007 about meeting to discuss the proposal, Respondent failed to follow up and schedule the meeting.
23. In January 2008, Ms. Ropo-Tusin contacted Ms. Ayars at the Board and learned that Respondent had fabricated the communications she said that she had had with Board staff.
24. Teamwork submitted a new proposal to the Board in December 2009. This proposal was not prepared by Respondent.
25. Respondent was paid an additional \$10,000 by Teamwork for her services.
26. Respondent did not reimburse Teamwork any of the money she had been paid.
27. Respondent did not prepare a proposal that was approved by the Board and she did not implement a vocational nurse education program for Teamwork.
28. Respondent did not comply with the terms of the Agreement with Teamwork.
29. Respondent did not express remorse for her conduct until after the Board began its investigation.
30. On January 21, 2011, Staff mailed a Notice of Hearing (NOH) and Formal Charges to Respondent at her address of record with the Board.
31. The NOH and 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 matters asserted.

32. On April 20, 2011, Administrative Law Judge (ALJ) Suzanne Formby Marshall held a hearing on the merits at the State Office of Administrative Hearings (SOAH) Austin office. Counsel for Staff was John F. Legris. Respondent appeared and *pro se*. The hearing adjourned and the record closed the same day.

IV. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the discipline of licensed nurses in Texas. TEX. OCC. CODE ch. 301.
2. SOAH has jurisdiction to conduct hearings and issue a proposal for decision in this matter. TEX. GOV'T CODE ch. 2003.
3. Respondent received proper and timely notice. TEX. GOV'T CODE §§ 2001.051 and 2001.052.
4. Based on Finding of Fact Nos. 1 through 6, Respondent violated TEX. OCC. CODE § 301.452(b)(10) and 22 TEX. ADMIN. CODE § 217.12(6)(H).
5. Based on Finding of Fact Nos. 1 through 4, and 7 through 29, Respondent violated TEX. OCC. CODE § 301.452(b)(10) and 22 TEX. ADMIN. CODE § 217.12(A) and (H).
6. Based on the above Findings of Fact and Conclusions of Law, and based upon the factors referenced in 22 TEX. ADMIN. CODE § 213.33, the Board's Disciplinary Matrix, the Board should revoke Respondent's LVN and RN licenses, and order Respondent to make restitution to Teamwork prior to applying for reinstatement of her license.

SIGNED June 17, 2011.



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS