

DOCKET NUMBER 507-04-8189



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. Thomas
Executive Director of the Board

IN THE MATTER OF
REGISTERED NURSE LICENSE
NUMBER 696997
VOCATIONAL NURSE LICENSE
NUMBER 177152
ISSUED TO
MARK A. TURNER

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§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER OF THE BOARD

TO: MARK A. TURNER
c/o John D. Nation Nation and
Andrea Nation, Attorneys at Law
5630 Yale Blvd
Dallas, Texas 75206-5035

During open meeting held in Austin, Texas, the Board of Nurse Examiners finds that after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a proposal for decision containing the Administrative Law Judge's findings of fact and conclusions of law. The proposal for decision 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 Board of Nurse Examiners, after review and due consideration of the proposal for decision, and exceptions and replies filed, if any, adopts the findings of fact and conclusions of law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that Registered Nurse License Number 696997, and Vocational Nurse License Number 177152, previously issued to MARK A. TURNER, to practice professional and vocational nursing in the State of Texas be, and the same is hereby, REVOKED.


IT IS FURTHER ORDERED that Registered Nurse License Number 696997, and Vocational Nurse License Number 177152, previously issued to MARK A. TURNER, upon receipt of this Order, be immediately delivered to the office of the Board of Nurse Examiners for the State of Texas.

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

Entered this 8th day of March, 2005.

BOARD OF NURSE EXAMINERS
FOR THE STATE OF TEXAS

BY:


KATHERINE A. THOMAS, MN, RN
EXECUTIVE DIRECTOR ON BEHALF OF SAID BOARD

SOAH DOCKET NO. 507-04-8189

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
PERMANENT CERTIFICATE	§	
	§	OF
NOS. 696997 AND 177152 ISSUED TO	§	
	§	
MARK A. TURNER	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Board of Nurse Examiners for the State of Texas (Staff/Board) seeks to discipline Mark A. Turner (Respondent) for violating provisions of the Nursing Practice Act (Act), TEX. OCC. CODE ANN. ch. 301, and the Board's rules. Staff alleged Respondent procured his professional nursing license by fraud or deceit by not revealing his prior criminal conduct. Staff further alleged that the criminal acts were unprofessional or dishonorable conduct that could injure a patient or the public. Respondent admitted he pleaded guilty to the criminal charges, but denied he responded to application questions untruthfully. Instead, Respondent contended he misunderstood the questions and the legal ramifications of the criminal conduct. The Administrative Law Judge (ALJ) agrees with Staff's recommendation that Respondent's vocational and professional nursing licenses be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On October 28, 2004, ALJ Georgie B. Cunningham convened the hearing in the William P. Clements Building, 300 West 15th Street, Austin, Texas. General Counsel James W. Johnston represented Staff, and Attorney John D. Nation represented Respondent. Neither party challenged notice or jurisdiction, which will be addressed in the findings of fact and conclusions of law. After evidence was received, the hearing closed on October 28, 2004.

II. DISCUSSION

A. Introduction

Respondent did not challenge Staff's charges that he pleaded guilty to two counts of credit card abuse in 1988, theft in 2000, and insurance claim fraud in 2003; however, he adamantly denied using fraud or deceit in securing his license. At the hearing, the Board's Executive Director Katherine A. Thomas, MN, RN, and Respondent testified. Additionally, Staff presented documentary evidence.

Generally, Ms. Thomas addressed the Board's policies regarding the seriousness of such conduct. In turn, Respondent attempted to minimize its seriousness and justify his conduct.

B. Does Respondent's Criminal Conduct Warrant Disciplinary Action?

Section 301.452(b)(10) of the Act provides that a person is subject to disciplinary action for unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public. It was established that Respondent's criminal history is as follows:

On November 29, 1988, Respondent pleaded guilty to two counts of Credit Card Abuse, a 3rd Degree Felony, in the Dallas County, Texas, Criminal District Court No. 5, in Cause Nos. F88-87577-HL and F88-87578-HL. Respondent's adjudication of guilt was deferred, and the court placed him on probation for a period of two years and assessed a fine of \$100.00 and court costs of \$67.50.

On October 18, 2000, Respondent pleaded guilty to Theft greater than or equal to \$500.00 but less than \$1,500.00, in the Dallas County, Texas, Criminal Court No. 4, in Cause No. MA007116-E. Respondent's adjudication of guilt was deferred, and the court placed him on Community Supervision for a period of 24 months, assessed a fine of \$500.00, and ordered him to pay restitution of \$757.75.

On September 3, 2003, Respondent pleaded guilty to Insurance Claim Fraud, 500, a Class A Misdemeanor, in the 283rd Judicial District Court of Dallas County, Texas, in Cause No. F02-01844-T. Respondent's adjudication of guilt was deferred, and the court placed him on Community Supervision for a period of two years, assessed a fine of \$750.00 and court costs of \$181.00, and ordered 80 hours of community service restitution.

The ALJ finds that Respondent's criminal acts and his subsequent behavior demonstrate unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public, as set forth in the statutory provision and Board's policy. The underlying conduct itself is more important than whether it resulted in a conviction. As established by Ms. Thomas, many of the patients in a nurse's care are vulnerable due to their illness, mental or physical condition, or age.

Respondent's criminal conduct, spanning a five-year time period, raises trust issues and reflects negatively on his professional character. Although no evidence was presented regarding Respondent's specific patients, he has been employed by a health agency delivering care to patients in their homes. Thus, patients in his care could be at risk. Furthermore, his most recent criminal act, an insurance claim fraud, was committed in 2003. Although Respondent attempted to excuse his criminal behavior by dismissing it alternatively as youthful innocence, mistaken identity, poor communication, and forgetfulness, the ALJ did not find his testimony credible. The pleas and court orders speak for themselves.

Furthermore, Respondent's application for employment as a nurse submitted to Presbyterian Hospital of Dallas in Dallas, Texas, on March 13, 2001, demonstrates an ongoing lack of trustworthiness. Respondent answered, "No," to the following question:

For any offense, other than a minor traffic violation,
... have you been convicted?
... pled no contest?
... been given probation in lieu of sentencing?
... any pending charges?

Presbyterian Hospital relied on Respondent's answer when it employed him, thus putting their patients at risk. With his negative answer, he concealed his credit card abuse and theft thereby denying the hospital the opportunity to consider that conduct in its employment determination. The ALJ finds it simply unbelievable that Respondent pleaded guilty in the 1988 and 2000 cases, received probation in both, and yet failed to understand the question. Furthermore, Respondent's comment that he had no intent to deceive as the hospital could have checked his criminal records, which had not been expunged, suggested he did understand the question.

In his testimony, Respondent referred to the criminal conduct as something that happened "early" in his career. The ALJ notes, however, that Respondent will be on probation until 2005 for the insurance claim fraud charges arising from an act when he was approximately 34 years of age. As a licensed nurse, Respondent could be a risk to both patients and the public with insurance claim fraud.

Accordingly, the ALJ finds that the credit card abuse, theft, and insurance claim fraud along with the untruthful answer on the employment application demonstrate a lack of trustworthiness and unprofessional conduct. The Board should impose disciplinary action pursuant to Section 301.452(b)(10) of the Act.

C. Did Respondent Use Fraud or Deceit in Procuring His License?

Section 301.452(b)(2) of the Act provides that a person is subject to disciplinary action for using fraud or deceit in procuring a license to practice professional nursing or vocational nursing. The evidence showed that on August 5, 2002, Respondent submitted an application to the Board for licensure as a professional nurse. He attested to the truth of the following statement on the Affidavit of Eligibility for Licensure/Certification:

Have never been convicted of or received a deferred order, with or without adjudication of guilt, for any crime other than a minor traffic violation?

While the ALJ notes that the question could have been more explicit, an applicant is advised in writing to consult an attorney or health care provider if he has any questions. The statement contains sufficient key words, such as *convicted*, *deferred order*, *adjudication of guilt*, and *crime other than minor traffic violation* that should cause a reasonable person to seek clarification rather than conclude it is not applicable to his prior criminal conduct.

The ALJ agrees with Ms. Thomas that Respondent's answer deprived the Board the opportunity to evaluate his prior criminal conduct in making its decision about his license. Instead, the Board relied on the truthfulness of his sworn statement. The Board not only adopted rules addressing good professional character, but also set forth a policy statement of why it considers character so important. The ALJ concludes that Respondent's failure to reveal his prior criminal conduct is a significant omission and a sufficient basis for license revocation.

D. Recommendation for Sanction

After evaluating Respondent's conduct, Ms. Thomas concluded that his intentional falsification of documents showed a lack of professional character. Consequently, she recommended that Respondent's licenses be revoked or voluntarily surrendered. She indicated the same analysis would apply for both licenses, as both kinds of nurses care for patients. She noted that Respondent has lied to his employer, and he has lied to the Board. The Board has adopted a policy statement that falsification of employment applications and failing to answer specific questions that would have affected the decision to employ, certify, or otherwise utilize a nurse raises concerns about a nurse's propensity to lie and whether the nurse possesses the qualities of honesty and integrity.

The ALJ notes that some factors are in Respondent's favor. The Board has taken no prior disciplinary action against him; he has paid his court costs and fines and has complied with his community service orders. While his employment records did not show exemplary conduct, neither did they reveal unsatisfactory conduct. None of his criminal acts involved patients.

Nevertheless, the ALJ concludes that the factors as a whole weigh against Respondent. His actions display a pattern of untruthfulness, untrustworthiness, and a lack of candidness necessary for professional conduct. Accordingly, the ALJ agrees with Staff that the evidence warrants revocation of Respondent's Texas nursing licenses.

III. PROPOSED FINDINGS OF FACT

1. Mark A. Turner (Respondent), a Registered Nurse, holds license number 696997 issued by the Board of Nurse Examiners for the State of Texas (Board).
2. Respondent also holds license number 177152 to practice vocational nursing in Texas.
3. The Board filed formal charges against Respondent on June 11, 2004.
4. The Board sent the charges to Respondent on June 18, 2004.
5. Written notice of the facts and conduct alleged to warrant adverse licensure action was sent to Respondent at Respondent's address of record and Respondent was given the opportunity to show compliance with all requirements of the law for retention of the license prior to commencement of this proceeding.
6. On September 17, 2004, the Board sent a hearing notice with a copy of the charges to Respondent by certified mail, return receipt requested, to his attorney of record.
7. The hearing notice 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.
8. Respondent and his attorney appeared at the hearing on October 28, 2004.
9. On September 6, 1988, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for two counts of Fraud-Illegal Use of a Credit Card, a 3rd degree Felony.
10. On November 29, 1988, Respondent pleaded guilty to two counts of Credit Card Abuse, a 3rd Degree Felony, in the Dallas County, Texas, Criminal District Court No. 5, in Cause Nos. F88-87577-HL and F88-87578-HL.


11. Respondent's adjudication of guilt was deferred in Cause Nos. F88-87577-HL and F88-87578-HL. The court placed him on probation for a period of two years and assessed a fine of \$100.00 and court costs of \$67.50.
12. On May 1, 2000, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for Theft, greater than or equal to \$500.00 but less than \$1,500.00, a Class A Misdemeanor.
13. On October 18, 2000, Respondent pleaded guilty to Theft greater than or equal to \$500.00 but less than \$1,500.00, in the Dallas County, Texas, Criminal Court No. 4, in Cause No. MA007116-E.
14. Respondent's adjudication of guilt was deferred in Cause No. MA007116-E, and the court placed him on Community Supervision for a period of 24 months, assessed a fine of \$500.00, and ordered him to pay restitution \$757.75.
15. On March 13, 2001, Applicant submitted an application for employment to Presbyterian Hospital of Dallas in Dallas, Texas, in which he answered "no" to the following question:
 - "For any offense, other than a minor traffic violation, have you:
 - ... been convicted?
 - ... pled no contest?
 - ... been given probation in lieu of sentencing?
 - ... any pending charges?"
16. On August 5, 2002, Respondent submitted an application to the Board for licensure as a professional nurse.
17. Respondent attested to the truth of the following statement on the Affidavit of Eligibility for Licensure/Certification:
 - "Have never been convicted of or received a deferred order, with or without adjudication of guilt, for any crime other than a minor traffic violation."
18. On March 27, 2003, Respondent was arrested by the Dallas County, Texas, Sheriff's Office for Insurance Claim Fraud, greater than or equal to \$1,500.00 but less than \$20,000.00, a State Jail Felony.
19. On September 3, 2003, Respondent pleaded guilty to Insurance Claim Fraud, 500, a Class A Misdemeanor, in the 283rd Judicial District Court of Dallas County, Texas, in Cause No. F02-01844-T.

20. Respondent's adjudication of guilt was deferred in Cause No. F02-01844-T, and the court placed him on Community Supervision for a period of two years, assessed a fine of \$750.00 and court costs of \$181.00, and ordered 80 hours of community service restitution.
21. Respondent remains on probation until 2005 in Cause No. F02-01844-T.
22. Respondent is employed by a home health agency.
23. Respondent provides nursing care to patients in their homes.
24. Patients in a nurse's care are vulnerable due to their illness, mental or physical condition, or age.

IV. PROPOSED CONCLUSIONS OF LAW

1. The Board of Nurse Examiners for the State of Texas (Board) has jurisdiction over this matter pursuant to the Nursing Practice Act (the Act), TEX. OCC. CODE ANN. subch. J.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and § 301.454 of the Act.
3. Proper and timely notice was effected upon the Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001; 22 TEX. ADMIN. CODE (TAC) §§ 213.10 and 213.22; and 1 TAC § 155.55(b).
4. Respondent violated § 301.452(b)(10) of the Act and 22 TAC §§ 217.12(1) and 239.11.
4. Respondent violated § 301.452(b)(2) of the Act and 22 TAC §§ 217.12(22) and 239.11(8).
6. Pursuant to § 301.453 of the Act, the Board should revoke Respondent's license.

SIGNED December 23, 2004.


GEORGIE B. CUNNINGHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS