



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 A. Plummer*  
Executive Director of the Board

**DOCKET NUMBER 507-13-2636**

**IN THE MATTER OF  
PERMANENT CERTIFICATE  
NUMBER 221780  
ISSUED TO  
YOLANDA RENE BRYANT**

**§ BEFORE THE STATE OFFICE  
§ OF  
§ ADMINISTRATIVE HEARINGS**

**OPINION AND ORDER OF THE BOARD**

**TO: YOLANDA RENE BRYANT  
C/O MARC MEYER, ATTORNEY  
33300 EGYPT LANE, SUITE B-200  
MAGNOLIA, TX 77354-2739**

**AMI L. LARSON  
ADMINISTRATIVE LAW JUDGE  
300 WEST 15TH STREET  
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on October 17-18, 2013, the Texas Board of Nursing (Board) considered the following items: (1) the Proposal for Decision (PFD) regarding the above cited matter; (2) Respondent's exceptions to the PFD; (3) Staff's response to Respondent's exceptions to the PFD; (4) the ALJ's final letter ruling of August 29, 2013; (5) Staff's recommendation that the Board adopt the PFD regarding the vocational nursing license of Yolanda Rene Bryant without changes; and (6) 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 Respondent filed exceptions to the PFD on August 5, 2013. Staff filed a response to the Respondent's exceptions to the PFD on August 6, 2013. On August 29, 2013, the ALJ issued her final letter ruling, in which she declined to make any changes to the PFD.

The Board, after review and due consideration of the PFD; Respondent's exceptions to the PFD; Staff's response to Respondent's exceptions to the PFD; the ALJ's final letter ruling of April 29, 2013; Staff's recommendations; and the presentation by the Respondent during the open meeting, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD, as if fully set out and separately stated herein, without modification. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

**Recommendation for Sanction**

Although 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 or conclusions of law<sup>1</sup>, the Board agrees with the ALJ's recommendation that the appropriate sanction in this matter is revocation of the Respondent's license<sup>2</sup>.

The Respondent's conduct, as outlined in adopted Findings of Fact Numbers 7 through 23 and Conclusions of Law Numbers 4, 6, and 7, raises serious concerns about the Respondent's professional character and whether the Respondent can be trusted to respect the property of patients and the public<sup>3</sup>. The Respondent's criminal history includes offenses of moral turpitude, which are serious in nature<sup>4</sup>. Further, the Respondent's criminal conduct is recent<sup>5</sup>. The Respondent's conduct calls into question her honesty, trustworthiness, and integrity<sup>6</sup>. Further, there is insufficient evidence that Respondent takes full accountability for her actions or has learned from her past mistakes in a way that would assure the Board that future misconduct will not occur<sup>7</sup>.

Therefore, after reviewing the aggravating and mitigating factors in this matter<sup>8</sup>, the Board finds that, pursuant to the Board's Disciplinary Matrix, the Board's Disciplinary Guidelines for Criminal Conduct<sup>9</sup>, and the Board's rules, including 22 Tex. Admin. Code §§213.27, 213.28, and 213.33(e) and (g), and the Occupations Code Chapter 53, the Respondent's license should be revoked.

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<sup>1</sup> 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. 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. As such, 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 choice of penalty is vested in the agency, not in the courts. 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.).

<sup>2</sup> The Board agrees with the ALJ that, pursuant to the Board's Disciplinary Matrix, the Respondent's conduct warrants a third tier, sanction level I sanction for her violation of §301.452(b)(10). See pages 11-12 of the PFD. The Board further agrees with the ALJ that the Respondent's conduct under the Board's Disciplinary Guidelines for Criminal Conduct warrants licensure revocation (where judicial order was entered less than three years ago). See pages 8-11 of the PFD.

<sup>3</sup> See pages 8-12 of the PFD and adopted Findings of Fact Numbers 12 and 21-23.

<sup>4</sup> See pages 8-12 of the PFD and adopted Finding of Fact Number 12.

<sup>5</sup> See adopted Findings of Fact Numbers 7-9.

<sup>6</sup> See pages 8-9 of the PFD and adopted Findings of Fact Numbers 12 and 22-23.

<sup>7</sup> See pages 10-11 of the PFD and adopted Findings of Fact Numbers 10, 12, 18, 22, and 23.

<sup>8</sup> The Board has reviewed the aggravating and mitigating factors in this case. However, the Board has determined that the mitigating factors do not outweigh the aggravating factors or the seriousness of the Respondent's conduct nor has the Respondent shown that a deviation from the Board's Disciplinary Guidelines for Criminal Conduct is warranted. See also page 11 of the PFD.

<sup>9</sup> Effective April 18, 2013 to present.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 221780, previously issued to YOLANDA RENE BRYANT, to practice nursing in the State of Texas be, and the same is 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.

FURTHER, pursuant to the Occupations Code §301.467 and the Board's Disciplinary Matrix (22 Tex. Admin. Code §213.33(b)), RESPONDENT is not eligible to petition for reinstatement of licensure until: (1) at least one (1) year has elapsed from the date of this Order; and (2) Respondent has paid the restitution ordered by the 371st District Court, Tarrant County, Texas, in Case No. 1254902D, in full. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 17<sup>th</sup> day of October, 2013.

TEXAS BOARD OF NURSING

  
KATHERINE A. THOMAS, MN, RN, FAAN  
EXECUTIVE DIRECTOR FOR THE BOARD

Attachment: Proposal for Decision; Docket No. 507-13-2636 (July 19, 2013).

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

July 19, 2013

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

VIA INTERAGENCY

**RE: Docket No. 507-13-2636; Texas Board of Nursing v. Yolanda Rene Bryant, Certificate No. 221780**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Ami Larson".

Ami L. Larson  
Administrative Law Judge

ALL:daa  
Enclosures

cc: Nikki R. Hopkins, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA INTERAGENCY  
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 (with 1 CD; Certified Evidentiary Record) – VIA INTERAGENCY  
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, P.L.L.C., 33300 Egypt Lane, Suite B-200, Magnolia, TX 77354-2739 – VIA REGULAR MAIL

SOAH DOCKET NO. 507-13-2636

TEXAS BOARD OF NURSING,  
Petitioner

v.

YOLANDA RENE BRYANT,  
PERMANENT CERTIFICATE NO.  
221780,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Texas Board of Nursing (Staff/Board) seeks to revoke the vocational nursing license of Yolanda Rene Bryant (Respondent) because of her criminal history. This Proposal for Decision finds that Staff has established grounds upon which disciplinary action may be taken against Respondent and recommends that Respondent's license be revoked for the reasons explained herein.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On March 12, 2013, Staff filed a Motion for Summary Disposition. Respondent filed a written response to the motion on April 19, 2013.<sup>1</sup> On May 14, 2013, Administrative Law Judge (ALJ) Rebecca Smith issued Order No. 2, granting partial summary disposition and finding that the Board may take disciplinary action against Respondent's nursing license based on her guilty pleas to two state jail felony charges of Misapplication of Fiduciary Property – \$1,500 to \$20,000, and the resulting deferred adjudication community supervision order.

The hearing on the issue of disciplinary sanctions was held on May 23, 2013, before ALJ Ami L. Larson in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Jena Abel, Assistant General Counsel.<sup>2</sup> Respondent appeared and was represented by attorney Marc M. Meyer. The record closed at the conclusion of the hearing that day. Matters concerning notice and jurisdiction were undisputed. Therefore, those

<sup>1</sup> Respondent requested and was granted an extension of time for submission of her response to Staff's motion.

<sup>2</sup> Ms. Abel appeared at the hearing in the place of Assistant General Counsel Nikki R. Hopkins, who was unavailable. Ms. Hopkins remains counsel of record for Staff.

matters are set out in the Findings of Fact and Conclusions of Law below without further discussion.

## II. DISCUSSION

### A. Undisputed Facts

Respondent became licensed by the Board as a vocational nurse on May 14, 2009, and currently holds permanent certificate number 221780. On March 17, 1997, Respondent pleaded guilty to and received one year of deferred adjudication community supervision for Theft of Property between \$50 and \$500. On January 4, 2012, Respondent pleaded guilty to two counts of Misapplication of Fiduciary Property – \$1,500 to \$20,000, a state jail felony, under Cause No. 1254902D in the 371<sup>st</sup> District Court of Tarrant County, Texas. Respondent committed those offenses during the time between October 1, 2008 and October 31, 2009, when she was approximately 37 years old. Upon entry of her guilty pleas, the Court deferred entering an adjudication of guilt and placed Respondent on community supervision for a period of four years. Additionally, the Court ordered Respondent pay \$9,305 in restitution to the Department of Veterans Affairs (VA).

### B. Applicable Law

Texas Occupations Code (Code) § 301.452(b)(3) provides that a licensee is subject to disciplinary action for being placed on deferred adjudication community supervision or deferred disposition for a felony or for a misdemeanor involving moral turpitude. And Code § 301.452(b)(10) provides that a licensee 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.” The Board’s rule at 22 Texas Administrative Code § 217.12(13) defines “unprofessional conduct” in part as criminal conduct “including, but not limited to, conviction or probation, with or without an adjudication of guilt, or receipt of a judicial order involving a crime or criminal behavior or conduct that could affect the practice of nursing.” The Board has determined that crimes against property, such as theft, and those concerning fraud or deception, are directly related to, and affect, the practice of nursing.<sup>3</sup>

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<sup>3</sup> 22 Tex. Admin. Code § 213.28(b)(2) & (3).

In determining the appropriate sanction to be imposed pursuant to conduct described in Code § 301.452(b)(3) & (10), the applicable rules require the Board and State Office of Administrative Hearings (SOAH) to use the Board's Disciplinary Matrix (Matrix),<sup>4</sup> and the Board's Disciplinary Guidelines for Criminal Conduct (Guidelines)<sup>5</sup> in determining the appropriate sanction in disciplinary matters.

### C. Evidence

Staff relied solely on its documentary evidence consisting of six exhibits, each of which was admitted into evidence. Respondent's three exhibits were admitted into evidence. She also presented the testimony of Gloria Bell and testified on her own behalf.

#### 1. Staff's Exhibits

Staff's exhibits include certified copies of criminal court documents related to the offenses to which Respondent pleaded guilty. Police reports related to the 1997 theft offense indicate that Spiegel's clothing store personnel received an anonymous call indicating that a store cashier would be giving away some property to another individual. Store personnel then observed Respondent approach a store cashier with various merchandise.<sup>6</sup> The cashier rang up part of the merchandise presented by Respondent but then voided out the transaction completely. After that, Respondent was observed writing a check, which she placed on the cashier's table. The cashier did not take the check, however, and Respondent retrieved it and placed it in her purse. The cashier then bagged the merchandise Respondent had presented and Respondent left the store, at which time she was detained by store personnel. According to the police report in evidence, in-store video cameras also recorded the transaction. According to the police report, both the cashier and Respondent were questioned following the transaction, and both admitted that Respondent had approached the cashier the previous day, asked whether she could come into the store and get something for free the next day, and the cashier agreed.

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<sup>4</sup> 22 Tex. Admin. Code § 213.33(b).

<sup>5</sup> Published at <http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>.

<sup>6</sup> Staff Ex. 6.

Staff's exhibits also include the indictment for the Misapplication of Fiduciary Property offenses to which Respondent pleaded guilty in 2012.<sup>7</sup> That exhibit indicates that Respondent received checks from the VA approximately every 30 days in amounts of either \$685 or \$725 beginning October 2008, and continuing through October 2009.

## 2. Respondent's Testimony

Respondent testified that she was first licensed as a vocational nurse in 2009, and her license has remained current. She currently works at River Oaks Health and Rehabilitation Center where she has been employed since December 2012. Respondent also previously worked as a nurse for Geryn Home Health and A Sensitive Touch Home Health Care.

With respect to the 1997 theft offense, Respondent was unable to recall the amount of the merchandise at issue but stated that she paid the court-ordered fine and court costs and was not required to pay restitution. Additionally, she noted that she completed the 12-month probation period. She testified that most of the information in the police reports regarding that offense is not true. Respondent denied knowing the cashier and testified that, as far as she knew, she paid for all the clothing that was rung up and bagged. She stated that after she put the merchandise on the cashier's counter, she moved to a different counter while the merchandise was being rung up because she was looking at cologne for her husband. According to Respondent, she then wrote a check for all of the merchandise, and she did not knowingly steal anything. She testified that she entered a guilty plea for a deferred adjudication because her attorney advised her to do so.

Respondent also testified about the Misapplication of Fiduciary Property offenses. She stated that her father experienced a medical emergency in 2008, which caused him to require placement in a nursing home. At that time, she stated, her father was receiving benefits from the Social Security Administration (SSA) and also from the VA. When her father was admitted to the nursing home, she met with the nursing home staff to fill out paperwork regarding her father's SSA and VA benefits. According to Respondent, she was given two typed letters, one for the SSA and one for the VA, with instructions for each agency to send her father's benefit checks to the nursing home in which he had been placed. Respondent stated that she read and signed both letters, which were supposed to be sent to the appropriate agencies. Afterward,

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<sup>7</sup> Staff Ex. 4.



Respondent stated, the SSA benefits went to the nursing home, but her father's VA benefit checks were sent directly to Respondent. Respondent stated that she did not have a bank account and she cashed the checks upon receiving them.

In July of 2009, Respondent testified, she attended an annual review meeting with representatives of the VA, who informed her that the checks she had been receiving should have gone to the nursing home where her father was residing. They further notified her that she needed to repay the amounts that the nursing home had not received. The criminal action was brought against her in 2012, she stated, at which time she was formally charged, pleaded guilty, and received deferred adjudication probation. According to Respondent, she remains on probation for that offense, but the only condition is that she make restitution to the VA in the amount of \$9,305. Respondent testified that she has been making steady payments and, as of the time of the hearing, she owed \$4,978.

Respondent testified that she understands now why her retention of the checks from the VA was a criminal offense and stated that she would handle the situation differently now. At that time, however, she did not know she was engaging in any wrongdoing and was just focused on taking care of her father, who passed away in 2010. Moreover, Respondent indicated, she does not believe that the criminal charges against her were fair because she used the money for her father and anything she bought for herself benefitted her father, which he knew. She acknowledged, however, that the checks she received were clearly marked as being from the VA and that she had signed the letter to the VA indicating that those checks were to be sent to her father's nursing home. She conceded that, as her father's fiduciary, she was responsible for making sure the VA money went to the right place, but she testified that she believed she acted properly as a fiduciary by taking care of her father. Respondent viewed the VA and nursing home as being equally responsible for making sure the money was properly sent to the right place.

According to Respondent's testimony, she has had six nursing jobs since 2009, when she became licensed as a nurse. Three of those jobs were in home health care. She currently works for Geryn Home Health on an as-needed basis, and her primary job is with River Oaks, a health and rehabilitative nursing agency where she works as a charge nurse. She stated that she has had no employment problems, and no prior complaints have been made against her to the Board. She

acknowledged, however, that in 2011, she was terminated from a prior position with Lifecare during her probationary period. She testified that her employment was terminated because the company was cutting back, she was not trained for wound care, and she had been tardy several times.

Respondent further stated that she would handle the situation with her father's checks differently if she had it to do over again and understands the responsibility involved in being a fiduciary. She noted that, after she became a nurse, one of her patients asked her to act as his fiduciary to help him remove family members from his will because he believed they were harming him. Respondent testified that she told the patient she could not do so because it would constitute a conflict of interest.

### **3. Gloria Bell's Testimony**

Ms. Bell testified that she met Respondent 15 years ago through a friend at work and they became friends. Once Respondent began attending the church where Ms. Bell and her husband serve as pastors, they developed a bond that they have shared ever since. Ms. Bell testified that she was shocked when she found out about the most recent criminal charges against Respondent because she knows Respondent to be honest and dependable. She stated that she knew little about the prior theft charge, other than that Respondent was young when it occurred, it was minor offense, and she received a deferred adjudication.

According to Ms. Bell, Respondent has tried to move forward, pay off her debt of restitution, and "keep her head up." Respondent has a daughter in college and a son and does not have much of a support structure other than the church and Ms. Bell and her husband. Nonetheless, Ms. Bell noted, Respondent reaches out to the church when she needs help.

### **4. Respondent's Exhibits**

Respondent's exhibits include a receipt showing that, as of May 17, 2013, she had paid \$5,363 and her balance for restitution and probation fees owed was \$4,978.<sup>8</sup> Also among Respondent's exhibits is an affidavit from Rob Abernathy, who is Respondent's son's high

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<sup>8</sup> Resp. Ex. A.

school football coach, and a letter from Pastor Roderick Bell, a pastor at Respondent's church and Ms. Bell's husband.<sup>9</sup>

In his affidavit, Mr. Abernathy stated that he has worked with Respondent in the context of many different school activities. He described Respondent as a true role model. He further stated that Respondent is an important member of her community and a committed member of her church. Mr. Abernathy indicated that Respondent takes time out of her busy schedule to be a friend to those in need, and he stated that he is proud to call her his friend.

Pastor Bell's letter describes Respondent's involvement in various church activities and praises her communication skills and willingness to function without the need for recognition or praise from others. He noted that Respondent has overcome many struggles and observed that she has grown "spiritually, emotionally, and mentally."

### III. ANALYSIS

Respondent did not dispute that she is currently under deferred adjudication probation supervision for two state jail felony offenses. Therefore, she is subject to disciplinary action by the Board under Code § 301.452(b)(3). Additionally, because of her guilty pleas and deferred adjudication for two felonies, Respondent is considered by the Board to have engaged in unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public. Therefore, she is also subject to discipline under Code § 301.452(b)(10). The terms of Order No. 2 established on summary disposition that Respondent is subject to disciplinary action as indicated above. The remaining issue for determination here is what, if any, disciplinary action should be imposed by the Board.

In determining the appropriate disciplinary action to be taken in any given case, the Board and SOAH are required to utilize the Matrix set forth in section 213.33(b) of the Board's rules. The Matrix categorizes sanctionable conduct into three offense tiers, each of which corresponds to two levels of suggested sanctions. Section 213.33(c) of the rules sets forth factors to consider in determining which offense tier and sanction level should apply to a particular violation. The Matrix also sets forth various aggravating and mitigating factors, which may be

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<sup>9</sup> Resp. Ex. C. This exhibit is a copy that appears to be on letterhead and parts of the text that overlap the graphic design on the letterhead are not legible.

considered by the Board along with any other aggravating or mitigating factors that may exist in a particular matter.<sup>10</sup>

The Board's rules also direct SOAH and the Board or Executive Director to use the applicable disciplinary sanctions policies in evaluating the impact of criminal conduct on nurse licensure in disciplinary matters.<sup>11</sup>

**A. Appropriate Disciplinary Action under Code § 301.452(b)(3)**

The Matrix indicates that disciplinary sanctions imposed under Code § 301.452(b)(3) are to be determined by consideration of the Guidelines,<sup>12</sup> section 213.28 of the Board's rules, and Code chapter 53.

Under the Guidelines, license revocation is the generally-recommended sanction for the commission of Misapplication of Fiduciary Property in which the judicial order was entered less than 3 years ago.<sup>13</sup> Therefore, under the Guidelines, revocation of Respondent's license is the appropriate sanction unless, after consideration of other relevant factors, an alternative sanction appears to be warranted by the evidence. A review of the evidence in the record as it relates to the relevant factors, however, suggests that the recommended sanction of revocation as reflected in the Guidelines is appropriate in this case.

The crimes to which Respondent pled guilty are felony offenses of moral turpitude, and are, therefore, serious. Additionally, those crimes are considered by the Board to be directly related to, and affect, the practice of nursing.<sup>14</sup> The law requires that nurses have the technical skill and expertise necessary to perform nursing duties competently and that they have good professional character, including honesty, trustworthiness, and integrity.<sup>15</sup> Respondent's criminal conduct calls into question her good professional character and, therefore, her fitness to

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<sup>10</sup> 22 Tex. Admin. Code § 213.33(b).

<sup>11</sup> 22 Tex. Admin. Code § 312.33(m).

<sup>12</sup> <<http://www.bon.state.tx.us/disciplinaryaction/discp-guide.html>>.

<sup>13</sup> In this case, although Respondent's criminal conduct was committed approximately 5 years ago, the judicial order placing Respondent under deferred adjudication probation was entered in 2012. The recommended sanctions found in the Guidelines are based on the date the judicial order was entered rather than the date of offense.

<sup>14</sup> 22 Tex. Admin. Code §§ 213.28(b)(2) & (3); 213.28(c)(2) & (3).

<sup>15</sup> 22 Tex. Admin. Code §§ 213.27(a), 213.28(c)(4).

continue to hold her license.<sup>16</sup> Additionally, because licensed nurses have the opportunity to treat vulnerable patients, Respondent may have further opportunities to engage in theft or misapplication of property if she retains her license.<sup>17</sup>

Although Respondent's criminal history is not extensive, she pleaded guilty to and received deferred adjudication for a prior theft in 1997.<sup>18</sup> In the absence of any other criminal conduct, that offense would not be significant now given its remoteness in time. But in light of Respondent's more recent criminal conduct, that crime further calls into question her honesty and integrity.

Respondent was 37 years old when she began accepting checks from the VA that were meant to go to the nursing home, and it has been more than 3 years since her last criminal conduct occurred.<sup>19</sup> Her criminal conduct is not considered to be a "youthful indiscretion" under the Board's rule because she was over 22 years of age when she committed both the 1997 theft and the 2008-2009 Misapplication of Fiduciary Property offenses.<sup>20</sup>

The evidence suggests that Respondent has worked for six different employers as a nurse since 2009.<sup>21</sup> According to the evidence, Respondent's employment as a nurse was terminated by one employer based on her tardiness, but not because of any issues related to her performance as a nurse. Respondent submitted letters of recommendation from her pastor and her son's high school football coach but did not offer any letters of recommendation from any prosecutors or other law enforcement or correctional officers associated with her case as contemplated by the Board's rules.<sup>22</sup> Additionally, although the evidence establishes that Respondent continues to pay off her court-ordered restitution, she remains on felony probation.

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<sup>16</sup> 22 Tex. Admin. Code §§ 213.28(b)(2) & (c)(6).

<sup>17</sup> 22 Tex. Admin. Code § 213.28(c)(5).

<sup>18</sup> 22 Tex. Admin. Code § 213.28(e)(1).

<sup>19</sup> 22 Tex. Admin. Code § 213.28(e)(2) & (3).

<sup>20</sup> 22 Tex. Admin. Code § 213.28(i).

<sup>21</sup> 22 Tex. Admin. Code § 213.28(e)(4).

<sup>22</sup> 22 Tex. Admin. Code § 213.28(e)(6) & (f).

Respondent's current levels of maturity and personal accountability are unclear from the record.<sup>23</sup> During the hearing, she denied culpability for the earlier retail theft offense. She further testified that it was unfair to hold her criminally responsible for cashing the VA checks meant to go to her father's nursing home. And although Respondent testified that she would do things differently now, the evidence is unclear as to whether she has learned from her past mistakes in a way that would prevent future criminal misconduct.

Under the Board's written policy regarding crimes related to fraud, theft, and deception, the Board may rely solely on Respondent's probation for a crime of moral turpitude involving fraud, theft, or deception, as a basis for suspending, limiting, or revoking her license. According to that policy, in determining the appropriate response to such criminal conduct, the Board is most concerned with evidence of premeditation, lack of remorse, and failure to pay restitution as indicators that the misconduct is likely to be repeated. Although the 1997 theft case involved premeditation, it occurred in the distant past. The more recent Misapplication of Fiduciary Property case appears to be more of an opportunistic crime rather than one of premeditation. The evidence establishes that Respondent signed letters directing the VA to send all payments to her father's nursing home as required. Only when the checks came to her, notwithstanding the letter's instructions, did Respondent cash the checks. Respondent expressed some degree of remorse at the hearing, but it was difficult to determine whether she was remorseful for having engaged in criminal conduct or for having been held responsible for that conduct. In any event, she appears to be making restitution payments as required and even paying more than the minimum on occasion.

Respondent has two children, one of whom is in college. And although she has little, if any, support from her family, the evidence demonstrates that Respondent is supported by her church community to whom she can turn if she needs help. Respondent has worked as a nurse since 2009, and there is no evidence to suggest that her practice has been unsafe in any way. Respondent presented at the hearing as a bright and articulate woman. And an evaluation of the relevant factors reveals both positive and negative aspects to her history and conduct. In the absence of greater mitigating evidence, however, such as recommendations from employers and/or law enforcement personnel, or other demonstrations of Respondent's current maturity,

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<sup>23</sup> 22 Tex. Admin. Code § 213.28(e)(5) & (f).

accountability, and lessons learned since her most recent criminal conduct, no basis has been established upon which to deviate from the Guidelines' standard recommendation for revocation of Respondent's license.

**B. Appropriate Disciplinary Action under Code § 301.452(b)(10)**

The Matrix supports revocation of Respondent's license under Code § 301.452(b)(10) as well. Respondent's unprofessional or dishonorable conduct constitutes a Third Tier Offense under the Matrix because it involved financial exploitation or unethical conduct resulting in a financial loss to the public in excess of \$4,999.99. Accordingly, under Sanction Level I of the Matrix, barring overriding evidence of mitigating circumstances, revocation of Respondent's license is warranted with no reinstatement until restitution is paid.

In addition to the general factors cited by the Matrix and analyzed above relative to Code § 301.452(b)(3), the Matrix also includes a number of "aggravating and mitigating circumstances" to be considered specifically in connection to disciplinary action imposed pursuant to Code § 301.452(b)(10). Among the potentially-applicable aggravating circumstances are "number of events" and "criminal conduct." The evidence establishes that Respondent engaged in criminal conduct. It is not clear what "number of events" means, however. Respondent committed unprofessional or dishonorable conduct as evidenced by her guilty pleas to two counts of felony Misapplication of Fiduciary Property. But each count stemmed from an ongoing series of transactions that took place over the course of a year. It is unclear whether this constitutes a number of events that would qualify as an aggravating circumstance in this case.

"Level of material or financial gain" is another aggravating circumstance set forth in the Matrix. However, there is no evidence to establish the level of material or financial gain to Respondent as a result of her criminal conduct. She testified that she spent the money she received from the VA on her father and that any money she spent on herself was with her father's knowledge and ultimately benefitted him. There are no receipts or other evidence in the record to establish how the money was spent and what, if any, financial or material gain Respondent received. Likewise, there is no evidence of actual harm, which is another aggravating circumstance cited in the Matrix. Although the VA money should have been sent directly to the nursing home, it is unclear from the evidence whether the nursing home was

nonetheless paid for its care of Respondent's father. The evidence in the record does not support the application of any other aggravating factors or any mitigating factors as specified in the Matrix for sanctions related to Code § 301.452(b)(10).<sup>24</sup>

Accordingly, pursuant to the applicable law and for the reasons explained above, the ALJ recommends that Respondent's nursing license be revoked at this time.

#### IV. FINDINGS OF FACT

1. Respondent is licensed as a vocational nurse in the State of Texas and holds permanent certificate number 221780.
2. Respondent's license was issued by the Board on May 14, 2009.
3. On February 19, 2013, Staff filed a Notice of Hearing for a hearing on the merits. On February 21, 2013, the Notice of Hearing and Formal Charges were properly delivered via U.S. Certified Mail to Respondent's counsel of record.
4. The notice of hearing 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.
5. On March 12, 2013, Staff filed a Motion for Partial Summary Disposition. Respondent filed her response on April 19, 2013. On May 14, 2013, Administrative Law Judge (ALJ) Rebecca Smith issued Order No. 2 Granting Partial Summary Disposition.
6. The hearing convened before ALJ Ami L. Larson on May 23, 2013, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. All parties participated in the hearing. The record closed at the conclusion of the hearing that day.
7. On January 4, 2012, Respondent pleaded guilty to two counts of Misapplication of Fiduciary Property -- \$1,500 to \$20,000, a state jail felony, under Cause No. 1254902D in the 371st District Court of Tarrant County, Texas.
8. The Court in Case No. 1254902D deferred adjudication of guilt, placed Respondent on community supervision for a period of four years, and ordered Respondent to pay \$9,305 in restitution to the Department of Veterans Affairs.

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<sup>24</sup> Additional aggravating circumstances specified in the Matrix in relation to Code § 301.452(b)(10) are: (1) prior complaints or discipline for similar conduct; (2) patient vulnerability; (3) involvement of or impairment by alcohol, illegal drugs, or controlled substances or prescription medications. The only mitigating factors cited are: (1) voluntary participation in established or approved remediation or rehabilitation program and demonstrated competency; or (2) full restitution paid.



9. Respondent committed the conduct underlying her guilty plea between October 1, 2008, and October 31, 2009.
10. Respondent was 37 years old at the time she began committing the crimes at issue in Cause No. 1254902D, her most recent criminal conduct.
11. On or about March 17, 1997, Respondent pleaded guilty to and received one year of deferred adjudication community supervision for Theft of Property between \$50 and \$500 in the County Criminal Court No. 3 of Tarrant County, Texas under Cause No. 0643751.
12. The crimes committed by Respondent are crimes of moral turpitude involving dishonesty.
13. Respondent's most recent criminal conduct was more than 3 years ago.
14. Respondent has worked as a nurse for six different employers since 2009 when she became licensed.
15. Respondent currently works as a nurse for two home health care agencies.
16. There is no evidence to suggest that Respondent's practice as a nurse has ever been unsafe.
17. Respondent has been making steady restitution payments and owes a balance of \$4,978 as of May 23, 2013.
18. Respondent did not submit any letters of recommendation from prosecutors, law enforcement, or correctional officers, to establish her present fitness or good professional character.
19. Respondent is actively involved in and supported by her church community.
20. Respondent has two children, one of whom is in college.
21. Respondent's criminal conduct is directly related to her ability to practice nursing in an autonomous role with patients/clients, their families, and significant others, and members of the public who are or may become physically, emotionally or financially vulnerable.
22. The evidence does not establish Respondent's current levels or maturity or accountability.
23. The evidence does not establish that Respondent has learned sufficiently from her past mistakes to avoid making similar mistakes in the future.

#### V. CONCLUSIONS OF LAW

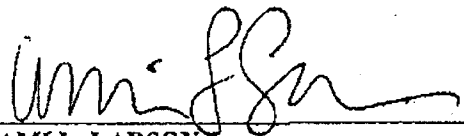
1. The Texas Board of Nursing (Board/Staff) has jurisdiction over this matter. Tex. Occ. Code (Code) ch. 301.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Notice of the hearing on the merits was provided as required by Code § 301.454 and by the Administrative Procedure Act, Texas Government Code §§ 2001.051 and 2001.052.
4. Respondent is subject to disciplinary action by the Board pursuant to Code § 301.452(b)(3) and (10).
5. Staff has the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
6. Respondent's deferred adjudication order for two charges of Misapplication of Fiduciary Property subject her to disciplinary action by the Board under Code §§ 301.452(b)(3) and (10).
7. Pursuant to the Board's Disciplinary Matrix at 22 TAC § 213.33(b), and the relevant factors to be considered under the Board's Disciplinary Guidelines for Criminal Conduct, the Board's Disciplinary Sanctions Policy for Fraud, Theft, and Deception, and sections 213.27 and 213.28 of the Board's rules, Respondent's license is subject to revocation based on her guilty pleas to and deferred adjudication order for two state jail felony counts of Misapplication of Fiduciary Property.

## VI. RECOMMENDATION

The ALJ recommends that Respondent's license be revoked based on the evidence in the record and the applicable law.

SIGNED July 19, 2013.



AMI L. LARSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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## Law Office of Marc Meyer, PLLC

### *Texas Nursing & EMS Lawyer*

Marc M. Meyer, RN, LP, MS, JD      Principal Office, Magnolia, TX

August 5, 2013

To:     Docketing, State Office of Administrative Hearings  
        Nikki Hopkins, Assistant General Counsel, Texas Board of Nursing

Re:     In the Matter of Permanent Certificate Number 2217801 Issued to Yolanda Rene Bryant; Docket No.  
        507-13-2636; Exceptions to the Proposal for Decision

Please see the attached exceptions to the proposal for decision in this matter. If you have any questions, please call me at (281) 259-7575. Thank you,

Marc M. Meyer, RN, JD  
Law Office of Marc Meyer, PLLC  
33300 Egypt Lane, Suite B200  
Magnolia, TX 77354-2878  
Office: 281.259.7575  
Fax: 866.839.6920  
[marc@marcmeyerlawfirm.com](mailto:marc@marcmeyerlawfirm.com)  
[www.marcmeyerlawfirm.com](http://www.marcmeyerlawfirm.com)

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The sender of this message is licensed to practice law in the State of Texas. Thank you.

**DOCKET NO. 507-13-2636**

<b>IN THE MATTER OF</b>	§	
<b>PERMANENT CERTIFICATE</b>	§	<b>BEFORE THE TEXAS STATE</b>
<b>NUMBER 221780</b>	§	
<b>ISSUED TO YOLANDA RENE BRYANT,</b>	§	<b>OFFICE OF ADMINISTRATIVE HEARINGS</b>
<b>RESPONDENT</b>	§	

**RESPONDENT'S EXCEPTIONS TO THE PROPOSAL FOR DECISION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

**NOW COMES** Respondent, Yolanda Rene Bryant, pursuant to 1 TEXAS ADMINISTRATIVE CODE §155.507(c), and files these Exceptions to the Proposal for Decision, and shows the Court:

**EXCEPTIONS**

**Analysis:** Respondent excepts to the ALJ’s analysis in two instances. First, the ALJ indicates that the Respondent has not offered letters of recommendation from any person “as contemplated by the Board’s rules.”<sup>1</sup> The Respondent asserts that the characterization of the testimony of Ms. Bell and the letters of recommendation from her son’s football coach and pastor are letters of recommendation as contemplated by Board rules in that the letters are written by “any other persons in contact with the convicted person.”<sup>2</sup> Therefore, the Respondent believes that testimony and evidence presented should be afforded more weight than it appears to have been given by the ALJ.

Second, the ALJ appears to give no weight at all to the restitution that the Respondent has made in her latest criminal matter. The Board will argue, and the Respondent does not dispute, that the Board’s disciplinary matrix allows mitigation only for full restitution.<sup>3</sup> However, this disregards other factors that the Board must consider in 22 TEXAS ADMINISTRATIVE CODE § 213.33(c)(8). Specifically, subsection 213.33(c)(8) requires consideration of “the actual damages, physical, economic, or otherwise, resulting from the violation.” There are no sections of the Nursing

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<sup>1</sup> Proposal for Decision, at 10. Citing 22 TEXAS ADMINISTRATIVE CODE § 213.28(e)(6) & (f).

<sup>2</sup> See 22 TEX. ADMIN. CODE § 213.28(e)(6).

<sup>3</sup> See Adopted Disciplinary Matrix, available at <http://www.bon.texas.gov/disciplinaryaction/discp-matrix.html>.

Practice Act (NPA), Board Rules or disciplinary sanction policies which require that only the initial loss to the public be the measure of damages resulting from the violation. In fact, the Disciplinary Sanction Policy for Fraud, Theft and Deception does not mention a level of economic loss as triggering higher levels of sanctions. In fact, it specifically states that:

The magnitude of the behavior is not necessarily a major factor the Board will consider. Factors related to the crime that would concern the Board the most are evidence of premeditation, lack of remorse, and failure to pay restitution. The presence of these factors is evidence to the Board that the likelihood of the same behavior being repeated is great enough that patients may be at risk for the same conduct. Acts of an impulsive nature where there is insight/remorse regarding the conduct may be mitigating factors for the Board to consider. The criminal behavior of fraud, theft, or deception will be evaluated on an individual basis considering the foregoing factors.<sup>4</sup>

In this matter, the ALJ received evidence, which is noted in the Proposal for Decision, that the Respondent has been making restitution payments regularly and now has a balance of \$4,978 or less.<sup>5</sup>

In addition, the Respondent asserts that there is no evidence of premeditation in this matter and that the Respondent's testimony indicated that she thought she had done everything correctly with regards to the VA to make sure payments were sent to the proper parties, but did not learn that the checks were not supposed to come to her until about nine (9) months later.<sup>6</sup> And the Respondent clearly has indicated that she has learned from this episode and now thinks about these type of matters in that she was presented with a similar situation and declined to enter into an arrangement to act as a fiduciary for a patient "because it would constitute a conflict of interest."<sup>7</sup> Therefore the Respondent asserts that the analysis of the mitigating factors did not give the correct level of weight to the restitution, lack of premeditation and level of remorse in this matter.

**Recommendation for Sanction:** Respondent excepts to the Recommendation for Sanction in that it appears excessive for the actual violations committed, none of which have a direct impact

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<sup>4</sup> Disciplinary Sanctions for Fraud, Theft and Deception, at 2. Available at <http://www.bon.texas.gov/disciplinaryaction/dsp.html>.

<sup>5</sup> PFD, at 13. See Finding of Fact No. Seventeen (17).

<sup>6</sup> PFD, at 4-5.

<sup>7</sup> PFD, at 6.

on her nursing practice, and does not take into account the mitigating evidence provided by the Respondent. The mission of the Board “is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely.”<sup>8</sup> The Respondent has admitted she was convicted of felony misapplication of fiduciary property and there is no question that the Board has the authority to impose disciplinary action in this matter.<sup>9</sup> But in the foregoing discussion, it is clear that the Respondent has been diligently working to make restitution to the VA. And the Respondent has provided character evidence, as contemplated under Board Rules, from the people who know her the best, her pastor and others who see her interact with family and others often.

Based on this additional mitigating evidence that should have been given more weight by the ALJ, the Respondent asserts that she is not a danger to the public and that the evidence shows that the Respondent is currently competent to practice safely and that the public policy contained in the Board’s mission is not supported by revoking the Respondent’s license, and that the public can be adequately protected by some form of a suspension. A revocation of the Respondent’s license at this time does nothing more to further the legitimate public policy aims of the Board and the Board’s mission, but only serves as a punishment for past unfortunate events.

**PRAYER**

Respondent, Yolanda Rene Bryant, prays that the honorable Administrative Law Judge:

1. Rewrite the Section III Analysis consistent with the discussion above, specifically granting weight to the restitution made and the character evidence admitted;
2. Change the Recommendation to recommend the Respondents’ nursing license be suspended for two years, but that the suspension be fully probated, with such reasonable stipulations as the Board deems necessary; AND
3. Propose to the Texas Board of Nursing in a Decision all relief at law or in equity to which Respondent is entitled.

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<sup>8</sup> See <http://www.bon.texas.gov/index.html>.

<sup>9</sup> Hearing Audio, at 16:24.

Respectfully submitted,

By: 

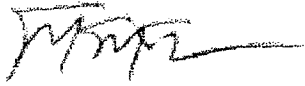
Marc M. Meyer  
Texas Bar No. 24070266  
33300 Egypt Lane, Suite B200  
Magnolia, TX 77354  
Tel. (281) 259-7575  
Fax. (866) 839-6920  
Attorney for Respondent Yolanda Rene Bryant

**CERTIFICATE OF SERVICE**

This is to certify that on the 5<sup>th</sup> day of August, 2013, a true and correct copy of the above and foregoing document was served on the following individual(s) at the location(s) and in the manner indicated below:

Docketing Division  
State Office of Administrative Hearings  
William P. Clements Building  
300 W. 15<sup>th</sup> Street, Suite 504  
Austin, TX 78701-1649  
VIA FACSIMILE AT 512-322-2061

Nikki Hopkins, Assistant General Counsel  
Texas Board of Nursing  
333 Guadalupe, Suite 3-460  
Austin, TX 78701  
VIA FASCIMILE AT 512-305-8101

  
\_\_\_\_\_  
Marc M. Meyer

DOCKET NUMBER 507-13-2636

TEXAS BOARD OF NURSING,  
Petitioner

vs.

YOLANDA RENE BRYANT, LVN  
Respondent (TX Lic # 221780)

§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**STAFF'S REPLY TO RESPONDENT'S EXCEPTIONS**

COMES NOW, Staff of the Texas Board of Nursing ("Staff" or "the Board"), and files this, its Reply to Respondent's Exceptions.

Staff is opposed to Respondent's exceptions and agrees with the ALJ's analysis.

First, Respondent's argument as it pertains to restitution misapplies the Board's rules and policies. Respondent appears to acknowledge the fact that the Board's disciplinary matrix contemplates eligibility for licensure and/or reinstatement only when full restitution has been made. This is stated in Rule 213.33 for situations where a nurse has demonstrated financial exploitation in an amount greater than \$5,000. However, she then cites the provisions of Rule 213.28 regarding actual damages. The Gilbert Law Dictionary defines damage as, "The loss or harm caused by the negligence, design, or accident of one person or his property." Restitution, however, is defined as "restor[ing] the injured party to a previous position, return[ing] something to the rightful owner, or restor[ing] the status quo." Thus, restitution and damages are distinct. First, damages were created when Respondent fraudulently took \$9,305 in damages from the Department of Veteran Affairs. Then, the 371<sup>st</sup> District Court of Tarrant County, Texas, ordered Respondent to return that sum to the V.A. as part of her restitution. It appears from the PFD that the ALJ properly considered the actual damages, i.e. the amount of \$9,305.

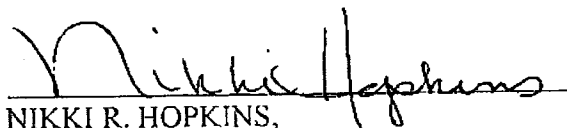
Next, Respondent argues that the ALJ did not properly consider the issue of premeditation in the determination of sanction. Staff disagrees. On page four of the PFD, the ALJ notes that Respondent received two sets of written instructions directing Respondent to submit her father's benefit checks to the nursing home rather than keeping them for herself. The ALJ also notes that Respondent received and kept her father's checks, which were sent to her every 30 days for a year. Staff would point out that although the first fraudulently-cashed check may have been opportunistic, the next 11 checks indicate a pattern of knowing dishonesty given the fact that the Respondent acknowledged she knew she was not supposed to cash those checks for herself. In her analysis, the ALJ addressed premeditation and remorse specifically on page 10 of the PFD; thus gave adequate weight and analysis to this issue.



Finally, Respondent takes exception to the sanction recommended by the ALJ, stating that revocation, "does nothing more to further the legitimate public policy aims of the Board and the Board's mission, but only serves as a punishment for past unfortunate events." This is incorrect. As the Board states in its Disciplinary Guidelines for Criminal Conduct as it relates to Misapplication of Fiduciary Property, "professional character is required in nursing and nurses must exhibit behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity. Patients frequently bring valuables (checkbook, or credit cards) with them to a health care facility. Nurses frequently provide care in private homes and home-like settings without supervision where all of the patient's property and valuables are accessible to the nurse and there would be a continuing opportunity to commit similar offenses as a nurse. Conduct involving a substantial risk of loss to a person's property raises serious concerns about a person's professional character and whether the nurse can be trusted to respect a patient's property/possessions." In other words, as someone who has taken a great deal of money that did not belong to her from a medical facility/government program, Respondent poses a risk to the public. The Board's mission is to protect the public. Thus, the revocation of Respondent's license serves a legitimate public policy aim and the Board's mission.

Respectfully submitted,

TEXAS BOARD OF NURSING

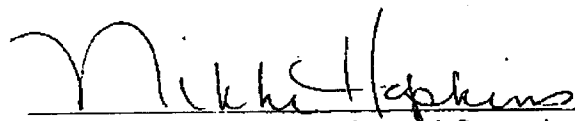


NIKKI R. HOPKINS,  
Assistant General Counsel  
State Bar No. 24052269  
333 Guadalupe, Tower III, Suite 460  
Austin, Texas 78701  
P: (512) 305-6879 F: (512) 305-8101

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Staff's Reply to Respondent Exceptions* was sent this, the 6<sup>th</sup> day of August, 2012, to:

Yolanda Rene Bryant c/o Attorney Marc Meyer  
33300 Egypt Ln., Suite B200  
Magnolia, TX 77354-2739  
Facsimile (866) 839-6920  
[marc@marcmeyerlawfirm.com](mailto:marc@marcmeyerlawfirm.com)



Nikki Hopkins, Assistant General Counsel

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

August 29, 2013

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

VIA FACSIMILE NO. (512) 305-8101

**RE: Docket No. 507-13-2636; Texas Board of Nursing v. Yolanda Rene Bryant, LVN**

Dear Ms. Thomas:

Please be advised that Yolanda Rene Bryant, Respondent, filed exceptions to the Proposal for Decision (PFD) that was issued on July 19, 2013. Nikki Hopkins, on behalf of Board Staff, filed a written reply to Respondent's exceptions. After reviewing the exceptions, reply, and the law applicable to this case, I do not recommend any changes to the PFD.

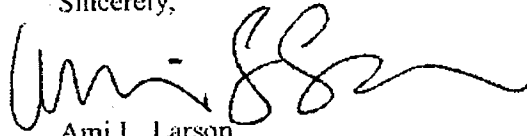
In her exceptions, Respondent pointed out that the letters she submitted as evidence are among those contemplated by the Board's rules. Her assertion is correct and, in fact, those letters were considered as part of the overall analysis of this matter. The PFD noted only that Respondent did not offer any additional letters from prosecutors or other law enforcement or correctional officers associated with her case as further contemplated by the Board's rules.

Additionally, Respondent's exceptions assert that the amount of restitution she has already paid reduces the amount of "actual damages" contemplated by 22 Texas Administrative Code § 231.33(c)(8). Moreover, she argued, according to the Board's Disciplinary Sanction Policy for Fraud, Theft, and Deception, more weight should have been given to the evidence establishing that her conduct was not premeditated, she has learned from her mistake, and she is continuing to make restitution payments as required.

Respondent's argument that the amount of actual damages should be reduced by the amount of restitution already paid by Respondent is not persuasive or supported by any law. The actual damages, according to common meaning, stem from the total amount unlawfully diverted by Respondent. Moreover, the evidence concerning Respondent's premeditation or lack thereof, remorse, and restitution was clearly considered, analyzed, and given the weight believed to be appropriate as explained in the analysis section of the PFD.

Accordingly, I do not believe the changes to the analysis or recommendation sections of the PFD, as suggested by Respondent's exceptions, are warranted.

Sincerely,



Ami L. Larson  
Administrative Law Judge

cc: Nikki R. Hopkins, TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - VIA FACSIMILE NO. (512) 305-8101  
Dina Flores, Legal Assistant TBN, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - VIA FACSIMILE NO. (512) 305-8101  
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, P.L.L.C., 33300 Egypt Lane, Suite B-200, Magnolia, TX 77354-2739 - VIA FACSIMILE NO. (866) 839-6920