

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.
Sarah G. Ramos
Executive Director of the Board

DOCKET NUMBER 507-13-2232

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 675869
ISSUED TO
TANJI DEVON YOUNG

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

OPINION AND ORDER OF THE BOARD

TO: TANJI DEVON YOUNG
C/O MARC MEYER, ATTORNEY
33300 EGYPT LANE, SUITE B-200
MAGNOLIA, TX 77354-2739

SARAH G. RAMOS
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) the ALJ's final letter ruling of July 31, 2013; (4) Staff's recommendation that the Board adopt the PFD regarding the registered nursing license of Tanji Devon Young without changes; and (5) 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 June 18, 2013. On July 31, 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; the ALJ's final letter ruling of July 31, 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 law¹, the Board agrees with the ALJ's recommendation that the appropriate sanction in this matter is revocation of the Respondent's license².

The Respondent's conduct, as outlined in adopted Findings of Fact Numbers 2 through 10 and Conclusions of Law Numbers 5 through 7, raises serious concerns about the Respondent's professional character³. The Respondent has pled guilty twice within a six year period to serious crimes, the last of which is very recent⁴. Further, the Respondent has attributed both crimes to individuals she has been closely associated with, which indicates an extreme lack of good judgment⁵. Additionally, the Respondent's drug related crime could affect her ability to handle drugs appropriately in the future, thereby placing patients and the public at risk of harm⁶. Finally, the Respondent is scheduled to be on felony probation until at least 2020⁷.

Therefore, after reviewing the aggravating and mitigating factors in this matter⁸, the Board finds that, pursuant to the Board's Disciplinary Matrix, the Board's Disciplinary Guidelines for Criminal Conduct⁹, 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

¹ 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.).

² The Board agrees with the ALJ that, pursuant to the Board's Disciplinary Matrix, the Respondent's conduct warrants a second tier, sanction level II sanction for her violation of §301.452(b)(10). See page 6 of the PFD. The Board further agrees with the ALJ that although the Respondent's conduct under the Board's Disciplinary Guidelines for Criminal Conduct warrants either licensure suspension or revocation (where judicial order was entered less than three years ago), the appropriate sanction in this matter is revocation. See page 6 of the PFD.

³ See page 7 of the PFD and adopted Findings of Fact Numbers 8 through 10.

⁴ See page 7 of the PFD and the ALJ's final letter ruling and adopted Findings of Fact Numbers 2 through 3 and 6 through 7.

⁵ See page 7 of the PFD and the ALJ's final letter ruling.

⁶ See page 7 of the PFD and the ALJ's final letter ruling and adopted Finding of Fact Number 8.

⁷ See page 7 of the PFD. Further, the Board's Guidelines for Criminal Conduct provide that, where an individual is currently on felony probation for a drug related offense, licensure revocation is warranted.

⁸ 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 sufficient evidence of rehabilitation to justify licensure suspension in lieu of revocation. See also page 7 of the PFD and the ALJ's final letter ruling.

⁹ Effective March 9, 2007 through April 18, 2013.

Respondent's license should be revoked.

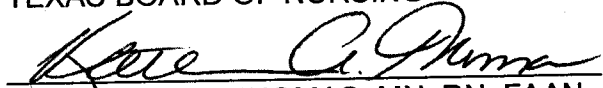
IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 675869, previously issued to TANJI DEVON YOUNG, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

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 court ordered restitution in the 364th District Court, Lubbock County, Texas, Case No. 2011432948, in full. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 17th 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. 507-13-2232 (May 31, 2013).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 31, 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: SOAH Docket No. 507-13-2232; In the Matter of Tanji D. Young

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,

**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SGR/VG
Enclosures

XC: R. Kyle Hensley, 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 - **VIA INTERAGENCY**
Marc M. Meyer, RN, JD, Law Office of Marc Meyer, PLLC, 33300 Egypt Lane, Ste. B-200, Magnolia, TX 77354-2739 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 507-13-2232

TEXAS BOARD OF NURSING,
Petitioner

v.

TANJI YOUNG,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) brought this action against Respondent Tanji Devon Young, seeking revocation of her license after she was placed on deferred adjudication for a drug-related felony. This proposal for decision agrees with Staff's recommendation.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing convened on April 8, 2013, before Administrative Law Judge (ALJ) Sarah G. Ramos in the William P. Clements Building, 300 West 15th Street, Austin, Texas. The Board's Assistant General Counsel, Kyle Hensley, represented Staff. Attorney Marc Meyer represented Ms. Young. The record closed at the conclusion of the hearing.

II. DISCUSSION

A. Background

Ms. Young became licensed as a registered nurse on February 27, 2001, and she holds Permanent Certification No. 675869.

On June 1, 2006, Ms. Young entered a plea of guilty to theft in the range of \$1,500 to \$20,000, a state jail felony. As a result of the guilty plea, proceedings against Ms. Young were

deferred without an adjudication of guilt. She was placed on probation for three years and ordered to pay court costs.

Ms. Young informed the Board about her arrest for theft and her guilty plea. She explained that the criminal proceedings were based on the actions of her former spouse. Using a line of credit in another person's name, Ms. Young's husband purchased items of furniture. The husband was then sent to a correctional facility because of a parole violation. While Ms. Young's husband was incarcerated, a detective came to her residence to investigate the furniture purchase her husband had made with the line of credit. Because the furniture was in Ms. Young's home, she was charged with the theft offense.

On October 29, 2008, based on the theft action, the Board issued the sanction of a reprimand with stipulations against Ms. Young. The stipulations included direct supervision by a registered nurse and reporting from Ms. Young's employer regarding her nursing capability. The stipulations were imposed for a three-year period, and there was no evidence that Ms. Young failed to comply with them.

On September 27, 2012, Ms. Young pled guilty to possession of a controlled substance PG1 methamphetamine 4-200 grams, a second degree felony offense, in the 364th District Court, Lubbock County, Texas, in Cause No. 2011432948. As a result of the plea, the proceedings against Ms. Young were deferred without an adjudication of guilt. She was placed on probation for a period of eight years and ordered to pay restitution and court costs. By letter dated August 22, 2011, Ms. Young notified the Board that she had been charged with the crime, and she later reported the outcome of those proceedings.¹ Staff then initiated this contested case.

¹ Respondent's Exs. A-1 and A-2.

B. Ms. Young's Testimony

Ms. Young said the methamphetamines for which she was placed on deferred adjudication belonged to her fiancé, Quinn Smith, and she was not aware drugs were in their home. However, Ms. Young's name was on the lease, and law enforcement officers found the methamphetamines in her fiancé's night stand. Mr. Smith is now in prison based on a conviction related to possession of the methamphetamines.

Since October 2012, Ms. Young has worked at Texas Specialty Hospital in Lubbock, a long-term acute care hospital. Medications are dispensed through a Pixis system, and two nurses must be present for the system to operate. Prior to working at that hospital, Ms. Young was employed at nursing homes in Brownfield and Lubbock.

Ms. Young acknowledged that a nurse must have good character, and she recognized the serious nature of the crime to which she pled guilty. Yet, she also pointed out that she has undergone many drugs screens, both for her employment and as a result of her probation, and none has ever shown the presence of drugs in her system. Ms. Young testified that she has never used or sold illegal controlled substances. No complaint has ever been made about her patient care, and she said she is motivated to continue practice nursing.

C. Letters of Recommendation

Ms. Young presented letters of support from colleagues and friends. She said everyone who wrote a letter knows about her history, including her guilty plea for methamphetamine possession.

Brenda Baker was a director of nursing at three facilities where Ms. Young worked. In her letter, she praised Ms. Young as the best nurse Ms. Baker has worked with in her 20-year career. According to Ms. Baker, Ms. Young is honest, ethical, forthright, professional, kind, and

courteous. Ms. Young is the one to whom Ms. Baker sends new nurses for training and orientation.²

Licensed vocational nurse (LVN) Shantavia Johnson has worked with Ms. Young for 18 months. She praised Ms. Young for providing good care for her patients and being especially hard-working and dedicated.³

Ms. Young has worked with LVN Arlena Earles for four years. Ms. Earles said Ms. Young always helps whenever she is needed and works as a team player. According to Ms. Earles, Ms. Young is a "great patient advocate." Ms. Earles respects Ms. Young for her integrity, compassion, and knowledge. She also praised Ms. Young for exceptional nursing competence.⁴

Another LVN whom Ms. Young has supervised, Cheryl Pride, also recommended that Ms. Young be allowed to continue her nursing practice. Like Ms. Earles, Ms. Pride mentioned Ms. Young's team attitude in working with her colleagues. She also mentioned her wisdom and strength. Like others who wrote letters, Ms. Pride praised Ms. Young's compassion, patient advocacy, and fine nursing skills. In particular, Ms. Pride said Ms. Young has taught her to do difficult nursing tasks with confidence.⁵

Ms. Young took care of Denise Powell's mother at a nursing facility and became friends with the family. Ms. Powell and her husband, William G. Powell, appreciated how Ms. Young attended to both the mother's physical and emotional needs. They found Ms. Young to be skilled, caring, and professional in her demeanor. Since becoming Ms. Young's friends, the Powells have observed that she is also an excellent parent to her two children.⁶

² Respondent Ex. B.

³ Respondent Ex. C.

⁴ Respondent Ex. D.

⁵ Respondent Ex. E.

⁶ Respondent Ex. F.

D. Testimony of Melinda Hester, R.N., Ph.D.

Dr. Hester holds a doctorate in nursing practice and is the lead practice consultant at the Board. She testified that nurses must not only have good nursing skills, they must have integrity and good judgment in their personal lives. Nurses work with persons who are at their most vulnerable, and patients can be harmed if nurses do not use good judgment.

In addition, Dr. Hester is concerned that Ms. Young has a prior Board Order based on her guilty plea for theft, and the Board has already given Ms. Young one opportunity to retain her license. Even though Ms. Young completed all requirements under the prior Board Order, Dr. Hester said the lesser sanction of a suspension would not sufficiently impress upon Ms. Young the need to comply with the law.

In Dr. Hester's opinion, possession of methamphetamines demonstrates unprofessional and dishonorable conduct that is likely to deceive, defraud, or injure a patient or the public and undermine public confidence in the profession. Even though Ms. Young has no history of poor nursing performance, Dr. Hester is concerned that she could harm patients because she has demonstrated an inability to learn from past mistakes. Dr. Hester said she would not change her opinion even if the methamphetamines did not belong to Ms. Young and she was unaware they were in her home.

E. Arguments

Staff argued that Ms. Young should demonstrate a pattern of law-abiding behavior before she is allowed to hold a license. Even if Ms. Young provides good care to her patients, she does not possess the character needed for licensing.

Petitioner asked the Board to consider the mitigating circumstances and issue a sanction that allows her to continue practicing as a nurse. She reiterated the fact that she has never been found to have used drugs herself. Her co-workers attested to her integrity and excellent nursing

skills. She asked the Board to issue a fully-probated suspension and assured the Board that she will comply with any stipulations imposed upon her.

III. APPLICABLE LAW

As stated in Texas Occupations Code (Code) § 301.452(b)(3), a licensee is subject to disciplinary action for "placement on deferred adjudication community service or deferred disposition for a felony. . . ." Board rule 22 Texas Administrative Code (TAC) § 217.12(13) defines "unprofessional conduct" to include "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's Disciplinary Matrix at 22 TAC § 213.33(b) provides that, for an action pursuant to Code § 301.452(b)(3), *i.e.*, when a person has been placed on deferred adjudication, the disciplinary action will be reviewed under the Board's Disciplinary Guidelines for Criminal Conduct.⁷ As stated in those Guidelines, felony crimes involving drugs, including the possession of controlled substances, relate to the practice of nursing. If the deferred adjudication occurred less than three years before the Board considers a sanction, the proper sanction is either revocation or suspension of the license.

Similarly, 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 Disciplinary Matrix for an action pursuant to Code § 301.452(b)(10) is based on the appropriate tier of the offense, the appropriate sanction level, and applicable aggravating and mitigating factors. Repeated acts of unethical behavior that place the public at risk of harm are considered second-tier violations. Given that this is Petitioner's second violation, a level II sanction for a second-tier violation is appropriate. A level II sanction can be either suspension or revocation of a license.

⁷ Published at <http://www.bon.state.tx.us/disciplinaryaction/pdfs/Guidelines-CriminalConduct.pdf>.

IV. ANALYSIS

Ms. Young has been placed on deferred adjudication twice, once for possession of a controlled substance. These facts support Staff's recommendation that Ms. Young's license should be revoked. While Ms. Young was not the primary actor in the crimes for which she pled guilty, the evidence shows that she has been intimately involved with persons who engaged in serious crimes. Such involvement indicates that Ms. Young lacks good judgment.

Even though Ms. Young is to be commended for her good nursing skills, work ethic, and the integrity with which she has practiced nursing, the drug-related crime for which she pled guilty is quite serious. Staff is justifiably concerned that a person who has violated a law relating to controlled substances may lack the ability to handle drugs appropriately and practice nursing safely.

Ms. Young was a mature adult when the court orders relating to theft and drug possession were issued. Thus, the crimes cannot be considered acts of youthful indiscretion.

Moreover, the deferred adjudication for methamphetamine possession was issued less than one year ago. Ms. Young is scheduled to be on community supervision until at least 2020. The ALJ concludes that Ms. Young's criminal history reflects illegal behavior that could affect the practice of nursing. The evidence and Board's guidelines support the sanction requested by Staff. Accordingly, the ALJ recommends that Ms. Young's nursing license be revoked.

V. FINDINGS OF FACT

1. Tanji Devon Young became licensed as a registered nurse on February 27, 2001, and holds Permanent Certification No. 675869.
2. On June 1, 2006, Ms. Young pled guilty to theft in the range of \$1,500 to \$20,000, a state jail felony.

3. As a result of the guilty plea, proceedings against Ms. Young were deferred without an adjudication of guilt. She was placed on probation for three years and ordered to pay court costs.
4. On October 29, 2008, based on the theft action, the Texas Board of Nursing (Board) issued the sanction of a reprimand with stipulations against Ms. Young. The stipulations included direct supervision by a registered nurse and reporting from Ms. Young's employer regarding her nursing capability. The stipulations were imposed for a three-year period.
5. There was no evidence that Ms. Young failed to comply with the stipulations.
6. On September 27, 2012, Ms. Young pled guilty to possession of a controlled substance PG1 methamphetamine 4-200 grams, a second degree felony offense, in the 364th District Court, Lubbock County, Texas, in Cause No. 2011432948.
7. After Ms. Young pled guilty to possession of a controlled substance, the proceedings against her were deferred without an adjudication of guilt. She was placed on probation for a period of eight years and ordered to pay restitution and court costs.
8. Ms. Young's offenses were serious and could affect the practice of nursing.
9. Ms. Young was a mature adult when her criminal offenses were committed, and the acts cannot be characterized as acts of youthful indiscretion.
10. Ms. Young's offenses constitute unprofessional conduct likely to deceive, defraud, or injure a patient or the public.
11. On October 18, 2012, the Board's staff (Staff) mailed notice of the formal charges to Ms. Young.
12. On February 5, 2013, Staff mailed the notice of the hearing to Ms. Young.
13. The notice of hearing stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters asserted.
14. The hearing convened April 8, 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.

VI. CONCLUSIONS OF LAW

1. The Board 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. Staff had the burden of proof by a preponderance of the evidence.
5. Ms. Young violated Code § 301.452(b)(3) and (10).
6. Ms. Young is subject to disciplinary action by the Board.
7. Pursuant to the Board's Disciplinary Matrix at 22 Texas Administrative Code (TAC) § 213.33(b) and the Board's Disciplinary Guidelines for Criminal Conduct, Ms. Young's license is subject to suspension or revocation.

VII. RECOMMENDATION

Based on the findings of fact and conclusions of law, the ALJ recommends that Ms. Young's license be revoked.

SIGNED May 31, 2013.



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS