



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.
William G. Newchurch
Executive Director of the Board

DOCKET NUMBER 507-15-0467

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE	§	
NUMBER 593893,	§	OF
ISSUED TO	§	
JOHN THOMAS CAHAK	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

**TO: JOHN THOMAS CAHAK
13422 ELMSGROVE LN.
HOUSTON, TX 77070**

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701**

At the regularly scheduled public meeting on April 16-17, 2015, the Texas Board of Nursing (Board) considered the following items: (1) the Proposal for Decision (PFD) regarding the above cited matter; (2) Staff's recommendation that the Board adopt the PFD with changes; and (3) Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. Staff filed exceptions to the PFD on December 31, 2014. The Respondent did not file any exceptions to the PFD or a response to Staff's exceptions to the PFD. On January 22, 2015, the ALJ issued his final letter ruling, in which he recommends that the Board sustain Staff's exceptions to the PFD.

The Board, after review and due consideration of the PFD, including the ALJ's letter ruling of January 22, 2015; 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, except for proposed Conclusion of Law Number 9, which is not adopted and is hereby re-designated as a recommendation. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Modification of PFD

The Board has authority to review and modify a PFD in accordance with the Government Code §2001.058(e). Specifically, §2001.058(e)(1) authorizes the Board to change a finding of fact or conclusion of law made by the ALJ or vacate or modify an order issued by the ALJ if the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. Further, §2001.058(e)(3) authorizes the

Board to change a finding of fact or conclusion of law made by the ALJ or vacate or modify an order issued by the ALJ if the Board determines that a technical error in a finding of fact should be changed.

Conclusion of Law Number 9 and Recommendation for Sanction

The ALJ found that the Respondent's violation of §301.452(b)(1) constitutes a second tier, sanction level I offense¹. Although labeled as a proposed *conclusion of law*, proposed Conclusion of Law Number 9 is part of the ALJs' recommendation and supports the ALJs' recommended sanction in this matter. As such, the Board re-designates proposed Conclusion of Law Number 9 as part of the ALJs' recommendation and declines to adopt it as a *conclusion of law*. Nevertheless, 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 law², the Board generally agrees with the ALJ that the Respondent's conduct warrants a second tier, sanction level I sanction for his violation §301.452(b)(1).

However, the Board also finds that the Respondent's violation of §301.452(b)(10) must be considered in determining the appropriate sanction in this matter. When an individual has committed more than one violation of the Nursing Practice Act and/or Board rules³, the Board is statutorily required⁴ to consider taking a more severe action than it would otherwise impose for a singular violation. Likewise, the Board must consider the more severe sanction recommended by the Disciplinary Matrix if more than one violation of the Nursing Practice Act and/or Board rules is being considered. In this case, the Board disagrees with the ALJ that the Respondent's violation of §301.452(b)(10) does not constitute a second tier offense under the Board's Matrix. The Respondent's conduct constitutes a substantive violation of the Board's September 2013 Order; it was not minor in nature. A major portion of the Board's September 2013 Order required the Respondent to abstain from the use of all alcohol and drugs. The Respondent was unable to do so. The Board, therefore, believes that a second tier sanction is authorized under the Board's Matrix for this conduct. For a second tier sanction, the Board's Matrix authorizes a range

¹ See pages 4-6 of the PFD and proposed Conclusion of Law Number 9.

² 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.).

³ See adopted Conclusion of Law Number 6.

⁴ See Tex. Occ. Code §301.4531.

of sanctions, from a Warning with Stipulations to revocation of licensure. These sanctions must be considered in light of the aggravating and mitigating factors present in this case, including other violations of the Nursing Practice Act and/or Board rules.

When reviewing the totality of the Respondent's conduct and the circumstances of this case, the Board finds that an Enforced Suspension of the Respondent's license, followed by probationary conditions, is the most appropriate sanction for the Respondent's violations of §301.452(1) and (10). The Respondent's September 2013 Board Order was based upon the Respondent's prior false statements regarding his addiction to drugs, treatment for that addiction, and voluntary surrender of his State of Nevada nursing license due to his diversion of drugs from his place of employment and self administration of those drugs⁵. The Respondent's inability to comply with the terms of the September 2013 Board Order by consuming alcohol, a prohibited substance, is of great concern to the Board. The Respondent's explanation that he absentmindedly ingested the alcohol⁶ is equally concerning to the Board. The Board notes that the Respondent did not have any additional positive screens for a prohibited substance while under the terms of the September 2013 Board Order⁷. However, the Board does not find this sole mitigating factor sufficient to justify a lesser sanction. The Respondent exhibited poor professional judgment and provides little assurance to the Board that such conduct will not be repeated in the future.

After carefully reviewing and considering the aggravating and mitigating factors in this case, the Board has determined, pursuant to the Board's Disciplinary Matrix⁸, and the Board's rules, including 22 Tex. Admin. Code §213.27 and §213.33(e), that the Respondent's license should be suspended under the terms of this Order pending his ability to obtain twelve (12) months of sobriety and completion of an approved treatment program. The Board also agrees with the ALJ regarding the probationary conditions of the Order. The Board finds that a nursing jurisprudence and ethics course and a critical thinking course⁹ are appropriate. The Board further agrees with the ALJ that direct supervised practice is appropriate and necessary for the first year of the Order, to be followed by indirect supervision for the remainder of the Order. A fine¹⁰, employment restrictions, employer notifications, and quarterly employer reports are also warranted for the probationary period of the Order. These conditions enable the Board to remain informed about the Respondent's practice while under the terms of this Order and ensure that the Respondent's practice is being supervised in accordance with the terms of the Order. Further, these conditions are necessary to ensure consistency in the Respondent's supervision so that patterns of practice may be effectively monitored and, if problematic,

⁵ See adopted Finding of Fact Number 3.

⁶ See pages 5-6 of the PFD.

⁷ See page 6 of the PFD.

⁸ 22 Tex. Admin. Code §213.33(b).

⁹ See 22 Tex. Admin. Code §213.33(f), which requires disciplinary orders to include participation in a program of education, including a course in nursing jurisprudence and ethics. Further, the Board agrees with the ALJ's recommendation in his final letter ruling of January 22, 2015. Additionally, although the Respondent may have previously completed a remedial education course in nursing jurisprudence and ethics, he should be required to retake this course based upon the violations of his Board Order and new disciplinary action.

¹⁰ See 22 Tex. Admin. Code §213.32(6)(B), which authorizes a fine ranging from \$250 - \$5,000 for a cluster of violations of the Nursing Practice Act and/or Board rules.

identified quickly. Finally, based upon the Respondent's history, admitted addiction, and non-compliance, the Board finds that drug screening and support group attendance are warranted for the probationary period of the Order. These conditions are authorized under 22 Tex. Admin. Code §213.33(e)(6)¹¹ and are consistent with Board precedent and prior administrative decisions involving similar violations.

I. TERMS OF ORDER

IT IS THEREFORE ORDERED, that Registered Nurse License Number 593893, previously issued to **JOHN THOMAS CAHAK**, to practice nursing in Texas is hereby **SUSPENDED** and said suspension is **ENFORCED** until Respondent:

- A. Completes an appropriate treatment program approved by the Board;
- B. Provides documentation of successful completion; and
- C. Obtains twelve (12) consecutive months of sobriety, which may be demonstrated by monthly urine drug screens consistent with the "DRUG AND ALCOHOL RELATED REQUIREMENTS" of this Order.

Any relapse prior to the completion of the required twelve (12) consecutive months of sobriety will result in revocation or, at a minimum, an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED, upon verification of successful completion of the above requirements, the Suspension will be **STAYED**, and RESPONDENT will be placed on **PROBATION** for a minimum of three (3) years **AND** until Respondent fulfills the requirements of this Order.

- D. RESPONDENT SHALL pay all re-registration fees, if applicable, and RESPONDENT'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.
- E. This Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.
- F. This Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- G. Respondent may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written

¹¹ 22 Tex. Admin. Code 213.33(e)(6) provides that the suspension of a license may be enforced and active for a specific period and/or probated with reasonable probationary stipulations as a condition for lifting or staying the order of suspension. Reasonable probationary stipulations may include the completion of remedial education courses, limitations of nursing activities, periodic Board review, supervised practice, and drug and alcohol testing.

permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where Respondent wishes to work.

II. COMPLIANCE WITH LAW

While under the terms of this Order, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Order.

III. SUPERCEDING ORDER

IT IS FURTHER ORDERED that the sanction and conditions of this Order SHALL supercede all previous stipulations required by any Order entered by the Texas Board of Nursing.

IV. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education courses within one (1) year of entry of the suspension being stayed, unless otherwise specifically indicated:

- A. A course in Texas nursing jurisprudence and ethics that shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and Falsification. Courses focusing on malpractice issues will not be accepted. Home study courses and video programs will not be approved.
- B. The course "Sharpening Critical Thinking Skills," a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider.

Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.

V. MONETARY FINE

RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars (\$500.00) within forty-five (45) days of suspension being stayed. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

VI. EMPLOYMENT REQUIREMENTS

In order to complete the terms of this Order, RESPONDENT must work as a nurse, providing direct patient care in a licensed healthcare setting, for a minimum of sixty-four (64) hours per month for twelve (12) quarterly periods [three (3) years] of employment. This requirement will not be satisfied until twelve (12) quarterly periods of employment as a nurse have elapsed. Any quarterly period without continuous employment with the same employer for all three (3) months will not count towards completion of this requirement. Periods of unemployment or of employment that do not require the use of a registered nurse (RN) or a vocational nurse (LVN) license, as appropriate, will not apply to this period and will not count towards completion of this requirement.

- A. Notifying Present and Future Employers:** RESPONDENT SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, RESPONDENT SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.
- B. Notification of Employment Forms:** RESPONDENT SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.
- C. Direct Supervision:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are

prohibited.

- D. **No Night or Rotating Shifts, Overtime, or On-Call:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned.
- E. **No Critical Care:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse in any critical care area. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- F. **No Administration of Controlled Medications:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, Propofol, or other synthetic opiates.
- G. **Indirect Supervision:** For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- H. **Nursing Performance Evaluations:** RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT and these reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month quarterly period for twelve (12) quarters [three (3) years] of employment as a nurse.

VII. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. While under the terms of this Order, RESPONDENT SHALL **abstain from the use of alcohol, tramadol and all controlled substances**, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication,

dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.

B. While working as a nurse under the terms of this Order, RESPONDENT SHALL submit to random periodic screens for alcohol, tramadol, and controlled substances. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when Respondent obtains employment and submits the Notification of Employment form to the Board.

- For the first three (3) month [1st quarter] period RESPONDENT works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
- For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.
- For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.
- For the remainder of the probation period, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board. Any test result for a period of time in which the RESPONDENT is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for at least the following substances and their metabolites:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene

tramadol hydrochloride (Ultram)

A Board representative may appear at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which RESPONDENT does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject RESPONDENT to further disciplinary action, including TEMPORARY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

- C. **While under the terms of this Order, RESPONDENT SHALL attend at least two (2) support group meetings each week**, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month quarterly period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

VIII. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IX. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT may be eligible for nurse licensure compact privileges, if any.

Entered this 16th day of April, 2015.

TEXAS BOARD OF NURSING

A handwritten signature in cursive script, appearing to read "Katherine A. Thomas", is written over a horizontal line.

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

Attachment: Proposal for Decision; Docket No. 507-15-0467 (December 16, 2014).

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 16, 2014

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. 507-15-0467; Texas Board of Nursing v. John T. Cahak

Dear Ms. Thomas:

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

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

Sincerely,

A handwritten signature in cursive script that reads "William G. Newchurch".

William G. Newchurch
Administrative Law Judge

WGN/Ls
Enclosures

xc: Natalie Adelaja, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA INTERAGENCY
Kathy A. Hoffman, Legal Assistant Supervisor, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA INTERAGENCY
John T. Cahak, 13422 Elmsgrove Ln., Houston, TX 77070 – VIA REGULAR MAIL

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SOAH DOCKET NO. 507-15-0467

TEXAS BOARD OF NURSING,
Petitioner

v.

JOHN T. CAHAK,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

Staff (Staff) of the Texas Board of Nursing (the Board) seeks disciplinary action against John T. Cahak (Respondent), a licensed registered nurse, because he failed to comply with an agreed order¹ requiring him to abstain from consumption of alcohol. Staff recommends an enforced suspension of Respondent's license until he remains sober for 12 months, as demonstrated by monthly urine screening, and completes an appropriate treatment program approved by the Board. Respondent also would be required to comply with many other requirements set out in the recommendation below. After he remains sober for 12 months, the license suspension would be stayed and Respondent would be placed on probation for three years and until he complied with all other requirements of any order issued in this case.²

Staff temporarily suspended Respondent's license. An Administrative Law Judge (ALJ) upheld the temporary suspension and left it in place until the Board finally rules in this case.

Respondent concedes that he violated the agreed order by consuming alcohol, but he contends that Staff's proposed sanctions are unduly harsh. He asks the Board to impose lesser sanctions.

¹ State's Ex. 6.

² State's Ex. 9.

The ALJ finds that Respondent violated the agreed order by consuming alcohol and the Board should impose the disciplinary sanctions proposed by Staff.

II. APPLICABLE LAW

Staff claims that Respondent is subject to disciplinary action under Texas Occupations Code § 301.452(b), which provides:

(b) A person is subject . . . to disciplinary action under this subchapter for:

(1) . . . a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter; [or]

. . .

(10) unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public . . .

Staff also alleges that Respondent engaged in an unlawful practice, a type of unprofessional conduct, that 22 Texas Administrative Code § 217.12 (11)(B) describes as:

(11) Unlawful Practice--actions or conduct that include, but are not limited to:

. . .

(B) Violating an order of the board . . .

III. VIOLATION

It is undisputed that Respondent violated an agreed Board order and may be disciplined for that violation. On September 10, 2013, the Board issued an agreed order that suspended Respondent's license for one year, but stayed the suspension and placed Respondent on probation with conditions.³ The Respondent was disciplined for providing false statements to the Board

³ State's Ex. 6 at 4.

concerning his previous addiction to drugs, treatment for that addiction, and voluntary surrender of his State of Nevada nursing license due to his diversion of drugs from his place of employment and self-administration of those drugs.⁴ Among other things, the agreed order provided: "RESPONDENT SHALL abstain from the consumption of alcohol . . . except as prescribed by a licensed practitioner for a legitimate purpose." The agreed order also required Respondent to "submit to random periodic screens for . . . alcohol" and provided "[a]ll random screens SHALL BE conducted by urinalysis."⁵

On September 3, 2014, Respondent submitted a urine sample that was analyzed and found to contain 2,090 nanograms per milliliter (ng/ml) of ethyl glucuronide and 545 ng/ml of ethyl sulfate, which are metabolites of alcohol and indicate that Respondent had recently consumed alcohol.⁶ During the hearing, Respondent admitted that he had consumed alcohol a few days before giving the sample.

IV. APPROPRIATE DISCIPLINARY ACTION

The Staff proposes an enforced suspension of Respondent's license for 12 months. During that time, he would be required to abstain from the use of alcohol, tramadol, and all controlled substances; submit to monthly screens for drugs and alcohol; successfully complete an appropriate treatment program; and provide Staff with documentation of that successful completion. Respondent would also have to comply with several other requirements, including taking remedial courses, not working outside Texas in a nursing-license-compact state, paying a \$500 fine, and numerous employment restrictions. If Respondent remained sober for 12 months, the suspension of his license would be stayed and he would be placed on probation for three years.⁷

⁴ State's Ex. 6 at 2-4.

⁵ State's Ex. 6 at 8 (emphasis in original).

⁶ State's Ex. 8 at 6.

⁷ State's Ex. 9.

The Board has adopted a Disciplinary Matrix (Matrix) for use in determining appropriate disciplinary actions.⁸ It classifies each violation by tier, according to the gravity of the offense, and by sanction level, based on aggravating and mitigating factors. The Board is also required to consider several other factors in conjunction with the Matrix when determining the appropriate sanction in disciplinary matters.⁹ Staff contends that the disciplinary action it proposes for Respondent accords with the Matrix and other factors.

The ALJ agrees that the Board should discipline Respondent as proposed by Staff, however, the ALJ's analysis is somewhat different from Staff's. At the close of the hearing, Staff argued that Respondent should be disciplined under Texas Occupations Code § 301.452(b)(10) by imposing Sanction Level II for a Third Tier Offense under the Matrix.¹⁰ However, the ALJ believes Staff's attorney misspoke.

It is true that Respondent could be disciplined under § 301.452(b)(10) because Respondent's violation of the previous agreed order was unprofessional conduct.¹¹ According to the Matrix, however, Respondent's unprofessional conduct was neither a Third nor a Second Tier Offense under § 301.452(b)(10). Such offenses result in or risk harm to a patient or the public, violate professional boundaries, or involve sexual contact with or physical abuse or financial exploitation of a patient. These factors are not present in this case. Were a sanction to be imposed on Respondent under Texas Occupations Code § 301.452(b)(10), the Matrix prescribes, at most, Sanction Level II for a First Tier Offense. That would be a warning with stipulations and a fine.

Respondent's violation of the agreed order is also disciplinable under Texas Occupations Code § 301.452(b)(1), and the ALJ concludes that is the more applicable and appropriate statute under which to discipline Respondent. Under the Matrix, failure to comply with a substantive

⁸ 22 Tex. Admin. Code § 213.33(b).

⁹ 22 Tex. Admin. Code § 213.33(c).

¹⁰ ALJ's official audio recording of hearing at 31:00-34:00.

¹¹ 22 Tex. Admin. Code § 217.12(11)(B).

requirement of a prior Board order is disciplinable under Texas Occupations Code § 301.452(b)(1) as a Second Tier Offense. Respondent has failed to comply with a substantive requirement of the agreed order that prohibited his consumption of alcohol. Accordingly, Respondent has committed a Second Tier Offense. The mildest sanction prescribed by the Matrix for such an offense is Sanction Level I, which prescribes the "next higher administrative sanction and an extension of the stipulations" for violations of stipulations in a prior Board order related to alcohol misuse.

The reference to the next higher sanction and extension of the stipulations is a bit difficult to decipher, but the Matrix gives an example for a similar violation. It states that such a violation "may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and then probation of the license with a fine and drug stipulations for three (3) years."¹² The Matrix also prescribes completion of the conditions of the original Board order and a \$500 fine for each additional violation. That is the combination of disciplinary sanctions that Staff recommends in this case, and the ALJ agrees it is appropriate.

As required by the agreed order,¹³ Respondent has successfully completed a course on Texas nursing and jurisprudence and a course on sharpening critical thinking. He has also successfully completed an outpatient chemical dependency program¹⁴ and the Texas Peer Assistance Program for Nurses.¹⁵ Respondent testified that he incurred several thousand dollars of expenses to take those courses and objected to Staff's proposal that he take them again. Staff agrees that Respondent should not have to take remedial education courses a second time if he can provide documentation showing that he has successfully completed them.

Respondent contends that an enforced suspension for one year, which would prevent his working as a nurse, is unduly harsh under the circumstances. He testified that he did not intend to

¹² Matrix at § 301.452(b)(1)(Second Tier Offense, Sanction Level I).

¹³ State's Ex. 6 at 6-7.

¹⁴ Respondent's Ex. 2.

¹⁵ Respondent's Ex. 1.

violate the agreed order and failed the screening because he absentmindedly consumed two glasses of wine at a dinner party. With that exception, Respondent asserts he has always complied with the agreed order. He correctly notes that he passed all other screenings for drugs and alcohol after the agreed order was issued.¹⁶ Respondent concedes that he was addicted to drugs in the past, but claims he has changed and remained sober. He testified that he has never had an alcohol abuse problem.

While the Board has discretion to impose a lesser sanction than the one proposed by Staff, the ALJ would not recommend its doing so. Sanction Level I is the lowest level prescribed by the Matrix for such a Second Tier Offense, like Respondent's, that is disciplinable under Texas Occupations Code § 301.452(b)(1). The Matrix lists mitigating circumstances that might lead to a lesser sanction, including unforeseen financial or health issues and not practicing nursing during the stipulation period, but there is no evidence of those circumstances in this case.

Nor does the ALJ recommend a sanction greater than Sanction Level I. When aggravating circumstances are present, the Matrix prescribes unconditional suspension or revocation of a nurse's license, as Sanction Level II for an offense disciplinable under Texas Occupations Code § 301.452(b)(1). Aggravating circumstances would include multiple offenses, continued failure to register for available remedial classes, recurring failure to provide information required by order, patient vulnerability, impairment at time of incident, and failure to cooperate with a compliance investigator. There is no evidence of those aggravating circumstances in this case.

A Board rule requires other factors to be considered in conjunction with the Matrix when determining the appropriate sanction.¹⁷ Most of those are considered in the Matrix and have been discussed above. As to the rest, there is no evidence that Respondent violated the agreed order by lack of truthfulness, misrepresentations, lack of fitness to practice, or causing damages, or due to system dynamics in the practice. The ALJ sees no reason to adjust Respondent's sanction due to these factors.

¹⁶ Respondent's Ex. 4.

¹⁷ 22 Tex. Admin. Code § 213.33(c).

V. FINDINGS OF FACT

1. John T. Cahak (Respondent) is a registered nurse licensed by the Texas Board of Nursing (Board), Registered Nurse License No. 593893.
2. On September 10, 2013, the Board issued an agreed order that suspended Respondent's license for one year, but stayed the suspension and placed Respondent on probation with conditions.
3. The Respondent was disciplined for providing false statements to the Board concerning his previous addiction to drugs, treatment for that addiction, and voluntary surrender of his State of Nevada nursing license due to his diversion of drugs from his place of employment and self-administration of those drugs.
4. Among other things, the agreed order provided: "RESPONDENT SHALL abstain from the consumption of alcohol . . . except as prescribed by a licensed practitioner for a legitimate purpose."
5. The agreed order also required Respondent to "submit to random periodic screens for . . . alcohol" and provided "[a]ll random screens SHALL BE conducted by urinalysis."
6. On September 3, 2014, Respondent submitted a urine sample that was analyzed and found to contain 2,090 nanograms per milliliter (ng/ml) of ethyl glucuronide and 545 ng/ml of ethyl sulfate, which are metabolites of alcohol and indicate that Respondent had recently consumed alcohol.
7. Respondent admits consuming alcohol a few days before September 3, 2014.
8. On September 29, 2014, the Board temporarily suspended Respondent's license due to his consumption of alcohol in violation of the agreed order.
9. On October 29, 2014, following a hearing, a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) ordered that the Board's temporary suspension of Respondent's license would remain in place until the conclusion of this case.
10. The ALJ also set the final hearing for November 10, 2014.
11. On October 30, 2014, Board Staff mailed to Respondent a notice of final hearing on disciplinary action proposed against him due to his violation of the agreed order. Respondent received the notice on November 1, 2014.
12. 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.

13. The notice of hearing alleged that Respondent is subject to disciplinary action under Texas Occupations Code § 301.452(b)(1) and (10) and that he had violated 22 Texas Administrative Code § 217.12(11)(B).
14. On November 10, 2014, SOAH ALJ William G. Newchurch convened the hearing in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas.
15. On that same day, the hearing was concluded, and the record was closed.
16. Natalie E. Adelaja, attorney, represented Staff at the hearing.
17. Respondent represented himself at the hearing.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. SOAH 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; Tex. Occ. Code § 301.454.
3. Notice of the hearing on the merits was provided as required. Tex. Occ. Code § 301.454; Tex. Gov't Code §§ 2001.051, 2001.052.
4. Staff had the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. By violating the agreed order of September 10, 2013, Respondent engaged in an unlawful practice, which is a type of unprofessional conduct. 22 Tex. Admin. Code § 217.12(11)(B).
6. Respondent is subject to disciplinary action. Tex. Occ. Code § 301.452(b)(1) and (10).
7. The Board has adopted a Disciplinary Matrix (Matrix) for use in determining appropriate disciplinary actions. 22 Tex. Admin. Code § 213.33(b).
8. The Matrix classifies each violation by tier, according to the gravity of the offense, and by sanction level, based on aggravating and mitigating factors.
9. Under the Matrix, Respondent's violation of the agreed order is disciplinable under Texas Occupations Code § 301.452(b)(1) as a Second Tier Offense to which Sanction Level I applies.

10. The Board is required to consider several factors in conjunction with the Matrix when determining the appropriate sanction in disciplinary matters. 22 Tex. Admin. Code § 213.33(c).

VII. RECOMMENDATION

Based on the above, the ALJ recommends that the Board adopt the following ordering provisions. They are taken from an agreed order that Staff proposed in this case¹⁸ to which Respondent would not agree. The ALJ has made stylistic adjustments to provisions to delete references to the agreement that never occurred and to note that Respondent may receive credit for a remedial education course he previously had completed.

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

IT IS THEREFORE ORDERED, subject to ratification by the Texas Board of Nursing, that Registered Nurse License Number 593893, previously issued to JOHN THOMAS CAHAK, to practice nursing in Texas is hereby **SUSPENDED** and said suspension is **ENFORCED** until Respondent:

- A. Completes an appropriate treatment program approved by the Board;
- B. Provides documentation of successful completion; and
- C. Obtains twelve (12) consecutive months of sobriety, which may be demonstrated by monthly urine drug screens consistent with the "DRUG AND ALCOHOL RELATED REQUIREMENTS" of this Order.

Any relapse prior to the completion of the required twelve (12) consecutive months of sobriety will result in revocation or, at a minimum, an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED, upon verification of successful completion of the above requirements, the Suspension will be **STAYED**, and **RESPONDENT** will be placed on

¹⁸ State's Ex. 9.

PROBATION for a minimum of three (3) years **AND** until Respondent fulfills the requirements of this Order.

- D. RESPONDENT SHALL pay all re-registration fees, if applicable, and RESPONDENT'S licensure status in the State of Texas will be updated to reflect the applicable conditions outlined herein.
- E. This Order SHALL apply to any and all future licenses issued to Respondent to practice nursing in the State of Texas.
- F. This Order SHALL be applicable to Respondent's nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- G. Respondent may not work outside the State of Texas in another nurse licensure compact party state without first obtaining the written permission of the Texas Board of Nursing and the Board of Nursing in the nurse licensure compact party state where Respondent wishes to work.

II. COMPLIANCE WITH LAW

While under the terms of this Order, RESPONDENT SHALL comply in all respects with the Nursing Practice Act, Texas Occupations Code, §§301.001 *et seq.*, the Rules and Regulations Relating to Nurse Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Order.

III. SUPERCEDING ORDER

IT IS FURTHER ORDERED that the sanction and conditions of this Order SHALL supercede all previous stipulations required by any Order entered by the Texas Board of Nursing.

IV. REMEDIAL EDUCATION COURSE(S)

In addition to any continuing education requirements the Board may require for licensure renewal, RESPONDENT SHALL successfully complete the following remedial education courses within one (1) year of entry of the suspension being stayed, unless otherwise specifically indicated:

- A. A course in Texas nursing jurisprudence and ethics that shall be a minimum of six (6) hours in length. The course's content shall include the Nursing Practice Act, standards of practice, documentation of care, principles of nursing ethics, confidentiality, professional boundaries, and the Board's Disciplinary Sanction Policies regarding: Sexual Misconduct; Fraud, Theft and Deception; Nurses with Substance Abuse, Misuse, Substance Dependency, or other Substance Use Disorder; and Lying and

Falsification. Courses focusing on malpractice issues will not be accepted. Home study courses and video programs will not be approved.

In order to receive credit for completion of this/these course(s), RESPONDENT SHALL CAUSE the instructor to submit a Verification of Course Completion form or SHALL submit the continuing education certificate, as applicable, to the attention of Monitoring at the Board's office. By complying with those requirements, Respondent may receive credit for a course completed before the issuance of this order. RESPONDENT SHALL first obtain Board approval of any course prior to enrollment if the course is not being offered by a pre-approved provider. *Information about Board-approved courses and Verification of Course Completion forms are available from the Board at www.bon.texas.gov/compliance.*

V. MONETARY FINE

RESPONDENT SHALL pay a monetary fine in the amount of five hundred dollars (\$500.00) within forty-five (45) days of entry of this Order. Payment is to be made directly to the Texas Board of Nursing in the form of cashier's check or U.S. money order. Partial payments will not be accepted.

VI. EMPLOYMENT REQUIREMENTS

In order to complete the terms of this Order, RESPONDENT must work as a nurse, providing direct patient care in a licensed healthcare setting, for a minimum of sixty-four (64) hours per month for twelve (12) quarterly periods [three (3) years] of employment. This requirement will not be satisfied until twelve (12) quarterly periods of employment as a nurse have elapsed. Any quarterly period without continuous employment with the same employer for all three (3) months will not count towards completion of this requirement. Periods of unemployment or of employment that do not require the use of a registered nurse (RN) or a vocational nurse (LVN) license, as appropriate, will not apply to this period and will not count towards completion of this requirement.

- A. **Notifying Present and Future Employers:** RESPONDENT SHALL notify each present employer in nursing and present each with a complete copy of this Order, including all attachments, if any, within five (5) days of receipt of this Order. While under the terms of this Order, RESPONDENT SHALL notify all future employers in nursing and present each with a complete copy of this Order, including all attachments, if any, prior to accepting an offer of employment.
- B. **Notification of Employment Forms:** RESPONDENT SHALL CAUSE each present employer in nursing to submit the Board's "Notification of Employment" form to the Board's office within ten (10) days of receipt of this Order. RESPONDENT SHALL CAUSE each future employer to

submit the Board's "Notification of Employment form" to the Board's office within five (5) days of employment as a nurse.

- C. **Direct Supervision:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL be directly supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.
- D. **No Night or Rotating Shifts, Overtime, or On-Call:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which Respondent is regularly assigned.
- E. **No Critical Care:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse in any critical care area. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- F. **No Administration of Controlled Medications:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, Propofol, or other synthetic opiates.
- G. **Indirect Supervision:** For the remainder of the probation period, RESPONDENT SHALL be supervised by a Registered Nurse, if licensed as a Registered Nurse, or by a Licensed Vocational Nurse or a Registered Nurse, if licensed as a Licensed Vocational Nurse, who is on the premises. The supervising nurse is not required to be on the same unit or ward as RESPONDENT, but should be on the facility grounds and readily available to provide assistance and intervention if necessary. The supervising nurse shall have a minimum of two (2) years experience in the same or similar practice setting to which the Respondent is currently working. RESPONDENT SHALL work only regularly assigned, identified and predetermined unit(s). RESPONDENT SHALL NOT be

employed by a nurse registry, temporary nurse employment agency, hospice, or home health agency. RESPONDENT SHALL NOT be self-employed or contract for services. Multiple employers are prohibited.

- H. **Nursing Performance Evaluations:** RESPONDENT SHALL CAUSE each employer to submit, on forms provided to the Respondent by the Board, periodic reports as to RESPONDENT'S capability to practice nursing. These reports shall be completed by the nurse who supervises the RESPONDENT and these reports shall be submitted by the supervising nurse to the office of the Board at the end of each three (3) month quarterly period for twelve (12) quarters [three (3) years] of employment as a nurse.

VII. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. While under the terms of this Order, RESPONDENT SHALL abstain from the use of alcohol, tramadol and all controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.
- B. While working as a nurse under the terms of this Order, RESPONDENT SHALL submit to random periodic screens for alcohol, tramadol, and controlled substances. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when Respondent obtains employment and submits the Notification of Employment form to the Board.
- For the first three (3) month [1st quarter] period RESPONDENT works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
 - For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.
 - For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.

- For the remainder of the probation period, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE conducted through urinalysis. Screens obtained through urinalysis are the sole method accepted by the Board. Any test result for a period of time in which the RESPONDENT is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for at least the following substances and their metabolites:

Amphetamines	Meperidine
Barbiturates	Methadone
Benzodiazepines	Methaqualone
Cannabinoids	Opiates
Cocaine	Phencyclidine
Ethanol	Propoxyphene
tramadol hydrochloride (Ultram)	

A Board representative may appear at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which RESPONDENT does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject RESPONDENT to further disciplinary action, including TEMPORARY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

- C. While under the terms of this Order, RESPONDENT SHALL attend at least two (2) support group meetings each week, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. RESPONDENT SHALL provide acceptable

evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month quarterly period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

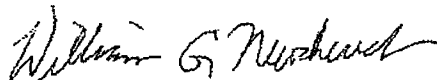
VIII. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against the Respondent's license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IX. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) to practice nursing in the State of Texas and RESPONDENT may be eligible for nurse licensure compact privileges, if any.

SIGNED December 16, 2014.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



Texas Board of Nursing

333 Guadalupe Street, Ste. 3-460, Austin, Texas 78701
Phone: (512) 305-7400 Fax: (512) 305-7401 www.bon.texas.gov

Katherine A. Thomas, MN, RN, FAAN
Executive Director

December 31, 2014

Administrative Law Judge William G. Newchurch
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

Filed Electronically

Re: In the Matter of Permanent Certificate No. 593893
Issued to **JOHN THOMAS CAHAK**
SOAH Docket No. 507-15-0467

Dear Judge Newchurch:

Enclosed please find Staff's Exceptions to the Proposal for Decision in the above-entitled matter.

By copy of this letter I am forwarding a copy of this document to the Respondent.

Please feel free to contact me at (512) 305-6880, should you have any questions and/or concerns regarding this case.

Thank you in advance for your time and assistance with this matter.

Very truly yours,


Natalie E. Adelaja
Assistant General Counsel

NEA/cp
Enclosure

cc: John Thomas Cahak
13422 Elmsgrove Ln
Houston, Texas 77070

Via First Class Mail

Members of the Board

Kathleen Shipp, MSN, RN, FNP
Lubbock, President

Nina Almasy, MSN, RN Austin	Deborah Bell, CLU, ChFC Abilene	Patricia Clapp, BA Dallas	Tamara Cowen, MSN, RN Hartlingen	Sheri Crosby, JD, SPHR Dallas	Marilyn Davis, MPA, BSN, RN Sugar Land
Shelby Elkay, BBA Midlothian	Monica Hamby, LVN Amarillo	Kathy Leader-Horn, LVN Granbury	Mary M. LeBeck, MSN, RN Weatherford	Josefina Luján, PhD, RN El Paso	Beverley Jean Nussli, LVN Bryan

SOAH DOCKET NO. 507-15-0467

IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 593893
ISSUED TO
JOHN THOMAS CAHAK

§
§
§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

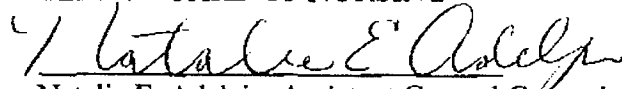
TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Staff of the Texas Board of Nursing (hereinafter "Staff") and files this, Exceptions to the Proposal for Decision, and would show the Administrative Law Judge the following:

Staff Excepts to the Administrative Law Judge's (ALJ's) proposed change to Section IV of the proposed order on pages 10 through 11 of the Proposal for Decision (PFD) regarding remedial education courses. The proposed order does not require the Respondent to take the course "Sharpening Critical Thinking Skills," as was required by the agreed order entered September 10, 2013, and which there was no evidence presented as to its completion. The proposed order does require that the Respondent complete a course in Texas nursing jurisprudence and ethics referenced therein. This course is a standard requirement of all orders issued by the Board (see 22 TEX. ADMIN. CODE § 213.33(f)). The Respondent would be required to retake this course based on a new disciplinary action.

Respectfully submitted,

TEXAS BOARD OF NURSING



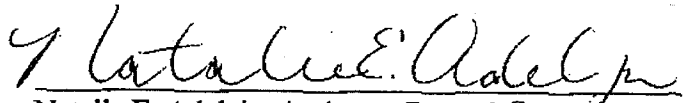
Natalie E. Adelaja, Assistant General Counsel
State Bar No. 24064715
333 Guadalupe, Tower III, Suite 460
Austin, Texas 78701
P: (512) 305-6880; F: (512) 305-8101

CERTIFICATE OF SERVICE

I hereby certify by my signature below that a true and correct copy of *Staff's Exceptions to the Proposal for Decision* has been provided by First Class Mail on December 31, 2014, to:

John Thomas Cahak
13422 Elmsgrove Ln
Houston, Texas 77070

Via First Class Mail


Natalie E. Adelaja, Assistant General Counsel

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 22, 2015

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

VIA FACSIMILE: (512)305-8101

RE: Docket No. 507-15-0467; Texas Board of Nursing v. John T. Cahak

Dear Ms. Thomas:

This is my recommendation concerning Staff's exception to my Proposal for Decision (PFD) in this case. Staff objects to Section IV, concerning remedial education courses, on pages 10 and 11 of the PFD. I recommend that the Board sustain this exception.

Sincerely,

William G. Newchurch
Administrative Law Judge

WGN/Ls

xc: Natalie Adelaja, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA FACSIMILE: (512)305-8101**
Kathy A. Hoffman, Legal Assistant Supervisor, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA FACSIMILE: (512)305-8101**
John T. Cahak, 13422 Elmsgrove Ln., Houston, TX 77070 - **VIA REGULAR MAIL**

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
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