



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.
Stephanie P. Harman
Executive Director of the Board

DOCKET NUMBER 507-20-2877

IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE § OF
NUMBER 337398, §
ISSUED TO
LESLIE ANN HERNANDEZ § ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: LESLIE ANN HERNANDEZ
3735 PLEASANTON RD, #D6
SAN ANTONIO, TX 78221

JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on July 23, 2020, the Texas Board of Nursing (Board) considered the following items: the Proposal for Decision (PFD) regarding the above cited matter; Staff's recommendation to the Board regarding the PFD and order; and Respondent's recommendation to the Board regarding the PFD and order, if any.

The Board finds that after proper and timely notice was given, the above styled case was heard by an Administrative Law Judge (ALJ) who made and filed a PFD containing the ALJ's findings of facts and conclusions of law. The PFD was properly served on all parties and all parties were given an opportunity to file exceptions and replies as part of the record herein. No exceptions were filed by either party.

The Board, after review and due consideration of the PFD; Staff's recommendations; and the recommendations made by the Respondent, if any, adopts all of the findings of fact and conclusions of law of the ALJ contained in the PFD, except for proposed Finding of Fact Number 1, which contains a typographical error in the Respondent's nursing license number. The Board notes, however, that a review of the record developed by the State Office of Administrative Hearings supports disciplinary action, as recommended by the ALJ, against vocational nurse license number 337398, issued to the Respondent. All proposed findings of fact and conclusions of law filed by any party not specifically adopted herein are hereby denied.

Recommendation for Sanction

Pursuant to Tex. Occ. Code. §301.459 (a-1), the Administrative Law Judge may make a recommendation regarding an appropriate action or sanction. The Board, however, has the sole authority and discretion to determine the appropriate action or

sanction. The Board agrees with the ALJ that revocation is statutorily mandated in this case pursuant to Tex. Occ. Code §301.4535(b).

IT IS, THEREFORE, ORDERED THAT Vocational Nurse License Number 337398, previously issued to LESLIE ANN HERNANDEZ, 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 §301.4535(c), Respondent is not eligible to petition for reinstatement of licensure until at least five (5) years have elapsed from the date the RESPONDENT completes and is dismissed from community supervision or parole. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

Entered this 23rd day of July, 2020.

TEXAS BOARD OF NURSING



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

Attachment: Proposal for Decision; Docket No. 507-20-2877 (April 13, 2020)

ACCEPTED
507-20-2877
4/13/2020 1:02 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK



FILED
507-20-2877
4/13/2020 12:57 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 13, 2020

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

VIA EFILE TEXAS

RE: Docket No. 507-20-2877; Texas Board of Nursing v. Leslie Anne Hernandez

Dear Ms. Thomas:

Please find enclosed a Proposal for Decision by Summary Disposition 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, a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

Joanne Summerhays
Administrative Law Judge

JS/tt
Enclosures

xc: Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite. 460, Austin, TX 78701–
VIA E-FILE TEXAS
Leslie Anne Hernandez, 718 Brookview Dr., San Antonio, TX 78213 – VIA REGULAR MAIL

SOAH DOCKET NO. 507-20-2877

TEXAS BOARD OF NURSING,
Petitioner

v.

LESLIE ANNE HERNANDEZ, LVN,
Respondent

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
BY SUMMARY DISPOSITION**

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the licensed vocational nurse (LVN) credential of Leslie Anne Hernandez (Respondent) because she received deferred adjudication for the third degree felony offense of Injury to Elderly, a violation of the Texas Penal Code §22.04. Staff filed a Motion for Summary Disposition (Staff's MSD) requesting a proposal for decision in its favor as a matter of law. Respondent filed a response. After considering these pleadings, the summary disposition evidence, and the applicable law, the Administrative Law Judge (ALJ) concludes that Staff's MSD should be granted and that Respondent's LVN license is subject to mandatory revocation. Therefore, the ALJ recommends the Board revoke Respondent's LVN license. The hearing set for April 22, 2020, is **CANCELED**.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On February 27, 2020, Staff referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing, and filed and served Respondent with Staff's MSD and supporting evidence. On the same date, Staff filed and served its Notice of Hearing, along with the Formal Charges, on Respondent. Respondent filed a response to the MSD on March 30, 2020.¹

¹ Respondent's response was due 15 days after the date Staff's MSD was filed. *See* 1 Tex. Admin. Code § 155.505(b)(2). However, due to business disruptions caused by the novel coronavirus (COVID-19), the ALJ deems Respondent's response timely. 1 Tex. Admin. Code § 155.505(b).

Staff's evidence established jurisdiction and proper notice to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law without further discussion.²

II. SUMMARY DISPOSITION EVIDENCE

Staff presented uncontested summary disposition evidence (Staff Exhibits A and B³) establishing the following relevant facts:

- Respondent is credentialed by the Board as an LVN, holding license number 337798.⁴
- On or about November 20, 2019, in Case No. 920167290X, *State v. Leslie Hernandez*, in the 186th District Court, Bexar County, Texas, Respondent pleaded nolo contendere to the third degree felony offense of Injury to Elderly, a violation of the Texas Penal Code § 22.04. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on two years community supervision.⁵

III. APPLICABLE LAW

Summary disposition of a contested case may be granted, in full or in part, without the necessity of a hearing on the merits if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.⁶

In seeking disciplinary action against Respondent, Staff relies on Texas Occupations Code (Code) § 301.4535. Subsection (a) of this section provides that the Board is required to suspend a

² On April 2, 2020, Staff filed a motion to convert the hearing to a telephonic hearing. As this PFD makes a hearing unnecessary, the motion is denied as moot.

³ The original Exhibit B filed by Staff was not legible. At the request of the ALJ, Staff refiled a legible copy of Exhibit B. The legible copy will be certified as the record copy of Exhibit B.

⁴ Staff Ex. A.

⁵ Staff Ex. B.

⁶ 1 Tex. Admin. Code § 155.505(a).

nurse's license if the nurse has been initially convicted of a listed offense, including intentionally, knowingly, or recklessly injuring an elderly individual under § 22.04 of the Texas Penal Code.⁷ Subsection (b) goes on to state that, following a final conviction or plea of guilty or nolo contendere to such an offense, the Board "as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license."⁸

IV. ARGUMENTS, ANALYSIS, AND RECOMMENDATION

The uncontroverted summary disposition evidence shows that Respondent pleaded nolo contendere to Injury to Elderly,⁹ a third degree felony offense under Texas Penal Code § 22.04.¹⁰ Therefore, as a matter of law, Respondent's LVN license is subject to mandatory revocation under Code § 301.4535(b).

Respondent argues that, despite her plea of nolo contendere and the order of deferred adjudication, the Board should consider mitigating factors in determining whether her license should be revoked.

The discretionary disciplinary authority of Code chapter 53 does not come into play because the Board is mandated by its own statute to revoke Respondent's license under these circumstances. Accordingly, revocation is required as a matter of law, and no evidentiary hearing is necessary to consider aggravating or mitigating factors relative to sanctions in this case. There is no legal basis to consider Respondent's assertion that the circumstances of her offense or other conduct establish her fitness to practice nursing. That discretion is not present pursuant to Code § 301.4535.

⁷ Tex. Occ. Code § 301.4535(a)(7).

⁸ Tex. Occ. Code § 301.4535(b).

⁹ Staff Ex. 2.

¹⁰ Because Exhibit B (the order of deferred adjudication) states Respondent was charged with a third degree felony, Respondent was found to have intentionally or knowingly committed the offense. Tex. Penal Code § 22.04(f).

For these reasons, Staff's MSD is **GRANTED**, and the ALJ recommends that the Board revoke Respondent's LVN license.

V. FINDINGS OF FACT

1. Leslie Anne Hernandez (Respondent) is credentialed by the Texas Board of Nursing (Board) as a licensed vocational nurse (LVN), holding license number 337798.
2. On or about November 20, 2019, in Case No. 920167290X, *State v. Leslie Hernandez*, in the 186th District Court, Bexar County, Texas, Respondent pleaded nolo contendere to the third degree felony offense of Injury to Elderly, a violation of the Texas Penal Code § 22.04. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on two years of community supervision.
3. On February 27, 2020, the Board's staff (Staff) referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
4. On February 27, 2020, Staff filed and served its Notice of Hearing on Respondent. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. On February 27, 2020, Staff filed and served Respondent with Staff's Motion for Summary Disposition and supporting evidence.
6. Respondent filed a response to Staff's motion on March 30, 2020, which was deemed timely-filed by the SOAH Administrative Law Judge (ALJ).

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 findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 301.454.
3. Respondent received timely and adequate notice of the allegations against her. Tex. Gov't Code §§ 2001.051-.052.
4. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is

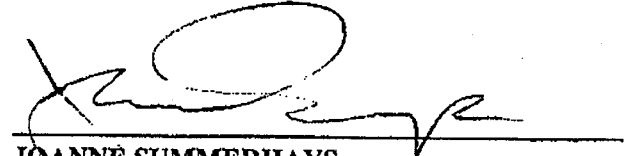
no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. 1 Tex. Admin. Code § 155.505(a).

5. Injury to an Elderly Individual is an offense under Texas Penal Code § 22.04(a)(3).
6. A third degree felony of Injury to an Elderly Individual requires that the offense be committed knowingly and intentionally. Tex. Penal Code § 22.04(f).
7. Respondent's LVN license is subject to mandatory revocation. Tex. Occ. Code § 301.4535(a)(7), (b).

VII. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board revoke Respondent's LVN license.

SIGNED April 13, 2020.



JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS