



I do hereby certify this to be a complete, accurate, and true copy of the document which is on file or is of record in the offices of the Texas Board of Nursing.
Patricia A. Plummer
Executive Director of the Board

DOCKET NUMBER 507-20-2746

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE § **OF**
NUMBER 311776, § **ADMINISTRATIVE HEARINGS**
ISSUED TO
JESSICA LYNN JOHNSON

OPINION AND ORDER OF THE BOARD

TO: JESSICA LYNN JOHNSON
5500 DESOTO ST., APT 915
HOUSTON, TX 77091

LINDA H. BRITE
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 22-23, 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 any 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. 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), an 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 ALJ found that the Respondent's conduct warrants a second tier, sanction level I sanction for her violations of §301.452(b)(10) and (13)¹. Either a Warning with Stipulations or a Reprimand with Stipulations is authorized under a second tier, sanction level I sanction². The Board agrees with the ALJ that a Warning with Stipulations is the most appropriate sanction in this case.

Respondent's conduct placed a vulnerable patient at risk of harm, and the Respondent had been counseled by her employer previously for sleeping on duty³. However, no actual harm to the patient occurred as a result of the Respondent's conduct⁴.

Therefore, after carefully reviewing and considering the aggravating and mitigating factors identified by the ALJ in this case, the Board has determined, pursuant to the Board's Disciplinary Matrix and the Board's rules, including 22 Tex. Admin. Code §213.33(e)(3), that a Warning with Stipulations is the most appropriate sanction in this matter.

Consistent with the ALJ's recommendation that the Respondent complete remedial education courses, the Board finds that the Respondent should be required to complete a nursing jurisprudence and ethics, critical thinking, and professional accountability course⁵. These courses are intended to inform the Respondent of the standards and requirements applicable to nursing practice in Texas and to prevent future violations from occurring. The Board recognizes that the ALJ did not find sufficient evidence to justify supervised practice in this case⁶, and, therefore, declines to impose any supervisory stipulations as part of this Order.

IT IS THEREFORE ORDERED that RESPONDENT shall receive the sanction of **WARNING WITH STIPULATIONS** in accordance with the terms of this Order.

I. 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 Nursing Education, Licensure and Practice, 22 TEX. ADMIN. CODE §§211.1 *et seq.*, and this Order.

II. UNDERSTANDING BOARD ORDERS

¹ See pages 6-8 of the PFD.

² See the Board's Disciplinary Matrix, located at 22 Tex. Admin. Code §213.33(b).

³ See pages 6-8 of the PFD and adopted Findings of Fact Numbers 4, 12, and 13.

⁴ See pages 6-8 of the PFD and adopted Finding of Fact Number 11.

⁵ 22 Tex. Admin. Code §213.33(f) requires every order issued by the Board to include participation in a program of education, which at a minimum, shall include a review course in nursing jurisprudence and ethics.

⁶ See page 8 of the PFD.

Within thirty (30) days of entry of this Order, RESPONDENT must successfully complete the Board's online course, "Understanding Board Orders", which can be accessed on the Board's website from the "Discipline & Complaints" drop-down menu or directly at: <http://www.bon.texas.gov/UnderstandingBoardOrders/index.asp>. Upon successful completion, RESPONDENT must submit the course verification at the conclusion of the course, which automatically transmits the verification to the Board.

III. 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 course(s) **within one (1) year of the effective date of this Order, unless otherwise specifically indicated:**

- A. **A Board-approved 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 and video programs will not be approved.
- B. **The course "Professional Accountability,"** a 4.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) Learning Extension.
- C. **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.*

IV. 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, subject to meeting all existing eligibility requirements in Texas Occupations Code Chapter 304, Article III, RESPONDENT may be eligible for nurse licensure compact privileges, if any.

Entered this 22nd day of October, 2020.

TEXAS BOARD OF NURSING

A handwritten signature in cursive script, appearing to read "Katherine A. Thomas".

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

Attachment: Proposal for Decision; Docket No. 507-20-2746 (August 10, 2020)

ACCEPTED
507-20-2748
8/10/2020 10:59 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK



FILED
507-20-2748
8/10/2020 10:41 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 10, 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. 507-20-2746; Texas Board of Nursing v. Jessica Johnson

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, a SOAH rule which may be found at www.soah.texas.gov.

Sincerely,

LINDA H. BRITTE
Administrative Law Judge

LB/lc
Attachment

xc: Helen Kelley, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – VIA EFILE TEXAS
Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 (with 1 CD of Hearing on the Merits via Inter-Agency Mail) – VIA EFILE TEXAS
Jessica Johnson, 5500 DeSoto Street, Apt. 915, Houston, TX 77091 – VIA E-FILE TEXAS

SOAH DOCKET NO. 507-20-2746

TEXAS BOARD OF NURSING,
Petitioner

v.

JESSICA LYNN JOHNSON,
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) alleges that Jessica Lynn Johnson (Respondent) failed to conform to the minimum standards of acceptable nursing practice and engaged in unprofessional conduct in the practice of nursing. Staff seeks sanctions including a warning, remedial education courses, and indirect supervision for a year.

The Administrative Law Judge (ALJ) determines that Respondent violated minimum standards of nursing practice described in 22 Texas Administrative Code § 217.11(1)(B) and (1)(T), and engaged in unprofessional conduct as described in § 217.12(1)(A), (1)(B), (1)(E), and (4). The ALJ recommends that the Board issue a warning and require Respondent to complete remedial education courses as determined appropriate by the Board.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

The telephonic hearing on the merits convened on June 9, 2020, before ALJ Linda H. Brite. Staff attorney Helen Kelley represented Staff. Respondent appeared and represented herself. The hearing concluded the same day, and the record closed on July 7, 2020, the deadline for filing final written closing arguments.

Notice and jurisdiction were not contested. Therefore, those issues are discussed only in the findings of fact and conclusions of law.

II. STAFF'S FORMAL CHARGE AND APPLICABLE LAW

Staff alleges that on May 11 and 12, 2019, while employed as a Licensed Vocational Nurse with Aveanna Healthcare in Houston, Texas, Respondent was sleeping while assigned to care for a patient. Staff further alleges that this conduct was likely to injure the patient by adversely affecting Respondent's ability to recognize symptoms or changes and make rational, appropriate assessments regarding patient care.

Pursuant to Texas Occupations Code (Code) § 301.452(b)(13), the Board may discipline a nurse for failure to care adequately for a patient or conform to the minimum standards of acceptable nursing practice in a manner that the Board finds exposes a patient or other person unnecessarily to risk of harm. Board Rule 217.11¹ discusses minimum acceptable standards of nursing practice, including the following:

- Board Rule 217.11(1)(B): Nurses must implement measures to promote a safe environment for clients and others; and
- Board Rule 217.11(1)(T): Nurses must accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability.

Pursuant to Code § 301.452(b)(10), the Board may also discipline a nurse for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public. Board Rule 217.12² addresses unprofessional conduct, which includes:

- Board Rule 217.12(1)(A): Carelessly failing, repeatedly failing, or exhibiting an inability to perform nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Board Rule 217.11;
- Board Rule 217.12(1)(B): Carelessly or repeatedly failing to conform to generally accepted nursing standards in applicable practice settings;

¹ 22 Tex. Admin. Code § 217.11. For ease of reference, a Board rule found in title 22, part 11, chapters 211 to 228 of the Texas Administrative Code is referred to as "Board Rule ____."

² 22 Tex. Admin. Code § 217.12.

- Board Rule 217.12(1)(E): Accepting the assignment of nursing functions or a prescribed health function when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care; and
- Board Rule 217.12(4): Conduct that may endanger a client's life, health, or safety.

Board Rule 213.33 sets out a disciplinary matrix (Matrix) that is intended to match the severity of the sanction imposed to the nature of the violation at issue.³ The Matrix classifies offenses by tier and sanction level, and must be consulted by the ALJ and the Board in determining the appropriate sanction. The Matrix includes mitigating and aggravating factors that may be considered by the Board in determining the appropriate sanction. In addition, Board Rule 213.33(c) provides a list of factors to be considered in determining the appropriate tier and sanction level of the violation under the Matrix.

Staff must prove its allegations by a preponderance of the evidence.⁴

III. EVIDENCE

Staff presented the testimony of Respondent and Elise McDermott and offered six exhibits, which were admitted. Respondent did not offer any exhibits and testified on her own behalf.

A. Employer Records

In May 2019, Respondent was employed with Aveanna Healthcare (Aveanna) in Houston, Texas. Respondent was assigned to work a night shift to care for a minor patient at the patient's home from 7:00 p.m. on May 11, 2019, to 7:00 a.m. on May 12, 2019. During this shift, the patient's mother observed and took photos of Respondent sleeping on the couch. After the patient's mother reported and submitted the photos to Aveanna, Respondent's employment was

³ 22 Tex. Admin. Code § 213.33; *see also* Tex. Occ. Code § 301.4531 (requiring the Board to adopt a schedule of sanctions).

⁴ 1 Tex. Admin. Code § 155.427.

terminated. The termination document dated May 16, 2019 states, "On 05/13/19 Mother of child V.R. reported that [Respondent] allegedly [had] fallen asleep during shift on 5/11/19 and 5/12/19 and had taken the patient's blanket to cover herself. Mother of child stated that patient was not injured. Mother of child provided [two] pictures of nurse."⁵

Aveanna records show Respondent clocked in for the shift at 7:04 p.m. on May 11, 2019. Respondent entered notes at 7:12 p.m., 7:16 p.m., 3:08 a.m., 3:13 a.m., and 4:24 a.m. The records also show that Respondent clocked out at 7:07 a.m. on May 12, 2019, with closing notes that read, "Pt sleeping in crib[,] rail raised[,] diaper dry[,] area cleaned. Pt on vent to trach. No distress noted[,] report given to [R]osa."⁶

B. Testimony of Respondent

Respondent testified she was six-months pregnant at the time and was anemic. The patient was a Medicaid patient with a tracheostomy and a CPAP machine. The patient's plan of care included a certain number of skilled nursing hours to monitor vital signs.⁷ According to Respondent's testimony, there was a roach infestation in the back of the house where the patient's room was. Respondent testified that because of the roach infestation, she asked the patient's mother if she could leave at 5:00 a.m. instead of 7:00 a.m. Respondent stated that the mother gave her permission to end her shift early. Respondent also testified that the mother was being mean at the time.

Respondent testified that at approximately 5:15 a.m., she had finished her shift and was waiting for her husband to pick her up when the patient's mother took the picture of Respondent sleeping on the couch with a baby blanket over her. In a previous conversation, Respondent admitted, she had told counsel for Staff that the picture depicted Respondent taking a nap during

⁵ Staff Ex. 4 at 21.

⁶ Staff Ex. 4 at 56-57.

⁷ Staff Ex. 4 at 66-67.

a break. According to Respondent, she was allowed to nap during breaks after the patient's mother woke up.

Respondent had previously been counseled and placed on probation for an allegation of sleeping on duty in February 2019. Aveanna had advised Respondent of the dangers of falling asleep during one's shift, the risks it can pose, and tips for prevention.⁸ Respondent acknowledged that sleeping during a shift puts the patient at risk of harm.

C. Testimony of Elise McDermott

Ms. McDermott has been a nursing consultant with the Board for more than three years. Ms. McDermott testified that as long as Respondent was in the patient's home, Respondent would have a duty to the patient unless there was documentation of the transfer of care to another caregiver.

Ms. McDermott stated that Respondent's violation of Code § 301.452(b)(10) is considered a First Tier Offense at Sanction Level II under the Matrix. Ms. McDermott testified that Respondent's violation of Code § 301.452(b)(13) is categorized as a Second Tier Offense at Sanction Level I under the Matrix. Though there was no actual harm to the patient, Ms. McDermott considered the previous allegations of sleeping and the vulnerability of the patient to be aggravating factors to be considered under the Matrix. According to Ms. McDermott, it was Respondent's responsibility to self-evaluate her health status before accepting an assignment to determine whether she was competent to perform the assignment.

Ms. McDermott recommended Respondent receive a warning with stipulations including coursework on nursing jurisprudence and critical thinking. Ms. McDermott's recommended sanctions also require that: Respondent notify employers; her employers submit notification of employment forms to the Board; Respondent undergo indirect supervision for one year; and her employers submit quarterly reports for one year.

⁸ Staff Ex. 4 at 51-52.

IV. ANALYSIS

Staff contends that Respondent: (1) failed to care adequately for a patient or conform to the minimum standards of acceptable nursing practice in a manner that the Board finds exposes a patient or other person unnecessarily to risk of harm under Code § 301.452(b)(13); and (2) committed unprofessional conduct likely to deceive, defraud, or injure a patient or the public under Code § 301.452(b)(10). Staff proved by a preponderance of the evidence that Respondent was sleeping while she was on duty.

The photos depict Respondent sleeping on a couch with a baby blanket over her at approximately 5:15 a.m. on May 12, 2019. Respondent claimed she was off duty because the patient's mother had given her permission to end her shift early at 5:00 a.m. However, Respondent acknowledged that she had previously provided Staff a different explanation: that she was taking a nap on a break. Aveanna's records also contradict Respondent's testimony because they show Respondent having worked her full assigned shift from 7:04 p.m. on May 11, 2019, to 7:07 a.m. on May 12, 2019. Further, the evidence did not provide any reason why the patient's mother would take a picture and report Respondent sleeping on shift if she had given Respondent permission to either nap during a break or end her shift prior to the photo being taken. Therefore, the credible evidence establishes Respondent was sleeping during her shift while she was still on duty.

A. Texas Occupations Code § 301.452(b)(13)

By sleeping while on duty, Respondent: (1) failed to implement measures to promote a safe environment for the patient, in violation of Board Rule 217.11(1)(B); and (2) failed to accept only those assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability, in violation of Board Rule 217.11(1)(T). She is therefore subject to sanction under Code § 301.452(b)(13).

The ALJ determines that Respondent's violations, related to adequacy of care and sanctionable under Code § 301.452(b)(13), are most appropriately considered a Second Tier

Offense under the Matrix because her actions meet the Matrix's definition of Second Tier conduct: "practice below standard with risk of patient harm."⁹

Applicable aggravating and mitigating circumstances can be found both within the Matrix and in Board Rule 213.33(c). An aggravating factor applicable to the evidence in this case is patient vulnerability, since the patient was a minor with a tracheostomy and a CPAP machine. An additional aggravating factor is the evidence that Respondent had previously been counseled for an allegation of sleeping in February 2019. On the other hand, a significant mitigating circumstance is that there was no actual harm as a result of Respondent's conduct. Upon consideration of both the aggravating and mitigating factors, the ALJ determines that Respondent's violations are best characterized as a Second Tier Offense, Sanction Level I under the Matrix, which authorizes the Board to issue a warning or reprimand with stipulations including supervised practice, limited specific nursing activities, and/or a fine of \$500 for each violation.

B. Texas Occupations Code § 301.452(b)(10)

By sleeping while on duty, Respondent also: (1) carelessly failed, repeatedly failed, or exhibited an inability to perform nursing in conformity with the standards of minimum acceptable level of nursing practice set out in Board Rule 217.11, in violation of Board Rule 217.12(1)(A); (2) carelessly or repeatedly failed to conform to generally accepted nursing standards in applicable practice settings, in violation of Board Rule 217.12(1)(B); (3) accepted the assignment of nursing functions when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care, in violation of Board Rule 217.12(1)(E); and (4) engaged in conduct that may endanger a client's life, health, or safety, in violation of Board Rule 217.12(4). She is therefore subject to sanction under Code § 301.452(b)(10).

The ALJ determines that Respondent's unprofessional conduct, which is sanctionable under Code § 301.452(b)(10), is most appropriately considered a First Tier offense under the

⁹ 22 Tex. Admin. Code § 213.33(b).

Matrix because Respondent's violations were unprofessional conduct resulting in unsafe practice with no adverse patient effects.¹⁰

Similar to the Code § 301.452(b)(13) analysis above, the ALJ considers the vulnerability of the minor patient and the previous counseling for a sleeping allegation to be aggravating factors. The lack of harm to the patient is a noteworthy mitigating factor to be considered in determining sanction level. Upon consideration of the aggravating and mitigating factors, Respondent's violations are best characterized as falling under a First Tier Offense, Sanction Level I, authorizing the Board to order remedial education and/or a fine of \$250 for each violation.

C. ALJ's Sanction Recommendation

After considering the appropriate aggravating and mitigating factors, the ALJ recommends that the Board issue a warning and require Respondent to complete appropriate remedial education courses selected by the Board. The ALJ disagrees with Staff that sufficient aggravating factors exist to warrant stipulations requiring a supervised practice.

V. FINDINGS OF FACT

1. Respondent Jessica Lynn Johnson is a licensed vocational nurse and holds license No. 311776, issued by the Texas Board of Nursing (Board).
2. In May 2019, Respondent was employed by Aveanna Healthcare (Aveanna) in Houston, Texas.
3. Respondent worked a night shift and was assigned to care for a minor patient at the patient's home from 7:00 p.m. on May 11, 2019, to 7:00 a.m. on May 12, 2019.
4. The patient had a tracheostomy and was connected to a CPAP machine.
5. Respondent clocked in for the assignment at 7:04 p.m. on May 11, 2019, and clocked out at 7:07 a.m. on May 12, 2019.
6. Respondent was sleeping on the couch in the patient's home during her assigned shift at approximately 5:15 a.m. on May 12, 2019.

¹⁰ 22 Tex. Admin. Code § 213.33(b).

7. The patient's mother observed and took photos of Respondent sleeping on the couch while Respondent was on duty at the patient's home.
8. After the patient's mother reported and submitted the photos to Aveanna, Respondent's employment was terminated.
9. Respondent was six-months pregnant at the time.
10. Respondent failed to self-evaluate her health status before accepting an assignment to determine whether she was competent to perform the assignment.
11. No actual harm to the patient resulted from Respondent sleeping while on duty.
12. Respondent's conduct posed a risk of harm to the patient due to the patient's age and medical condition.
13. In February 2019, Aveanna had counseled Respondent for an allegation of sleeping while on duty. Respondent was advised of the dangers of falling asleep during one's shift, the risks it can pose, and tips for prevention.
14. On April 22, 2020, the Board's staff (Staff) sent Respondent a Notice of Hearing. On May 19, 2020, Order No. 1 converted the hearing to a telephonic hearing.
15. The Notice of Hearing and Order No. 1 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.
16. The hearing convened telephonically on June 9, 2020, before Administrative Law Judge (ALJ) Linda H. Brite. Attorney Helen Kelley represented Staff, and Respondent represented herself.
17. The hearing concluded the same day, and the record closed July 7, 2020, the filing deadline for the parties' closing briefs.

VI. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code ch. 301.
2. The State Office of Administrative Hearings has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.

3. Respondent received adequate and proper notice of the hearing on the merits. Tex. Occ. Code § 301.454; Tex. Gov't Code §§ 2001.051-.052.
4. Staff carries the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction under Texas Occupations Code § 301.452(b)(10) because she committed unprofessional conduct in that she: carelessly failed to perform nursing in conformity with the standards of minimum acceptable level of nursing practice; carelessly failed to conform to generally accepted nursing standards in applicable practice settings; accepted an assignment of nursing functions when the acceptance of the assignment could be reasonably expected to result in unsafe or ineffective client care; and engaged in careless conduct that may have endangered a client's life, health, or safety. 22 Tex. Admin. Code § 217.12(1)(A), (1)(B), (1)(E), (4).
6. Respondent is also subject to sanction under Texas Occupations Code § 301.452(b)(13) because she failed to care adequately for a patient or conform to the minimum standards of acceptable nursing practice in a manner that exposed a patient unnecessarily to risk of harm, in that she: did not implement measures to promote a safe environment for clients and others; and failed to accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability. 22 Tex. Admin. Code § 217.11(1)(B), (T).
7. The Board may impose a disciplinary sanction, which can range from remedial education to revocation of a nurse's license. Tex. Occ. Code § 301.453; 22 Tex. Admin. Code § 213.33(e).
8. To determine the appropriate disciplinary sanction to be imposed in this case, the Board must consider the factors set forth in 22 Texas Administrative Code § 213.33(c) and the Board's Disciplinary Matrix. 22 Tex. Admin. Code § 213.33(b).

VII. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board issue a warning and require Respondent to complete appropriate remedial education courses selected by the Board.

SIGNED August 10, 2020.



**LINDA H. BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**