



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 C. Hannon
Executive Director of the Board

DOCKET NUMBER 507-20-1439

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE		
NUMBER 909235 ,	§	OF
ISSUED TO		
HAJER NAITAMAR	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: HAJER NAITAMAR
C/O MARC M. MEYER, ATTORNEY
525 WOODLAND SQUARE BLVD.
STE 250
CONROE, TX 77384

BETH BIERMAN
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on January 21-22, 2021, 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 Board finds that the Respondent's conduct warrants a first tier, sanction level I sanction for her violation of §301.452(b)(8). Either a Warning with Stipulations or a Reprimand with Stipulations is authorized under a first tier, sanction level I sanction¹. The Board agrees with the ALJ that a Warning with Stipulations is the most appropriate sanction in this case².

Respondent's conduct posed a risk of harm to a very ill and vulnerable patient³. However, there was no evidence of actual harm to the patient, and the Respondent successfully completed the remediation required by the Michigan Board Order⁴.

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, the Board finds that the Respondent should be required to complete a nursing jurisprudence and ethics course⁵. This course is 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 also agrees with the ALJ that the Respondent's practice should be indirectly supervised for the duration of the Order. The Board further finds it appropriate to prohibit the Respondent from working in independent practice settings, like home health or hospice, and from being employed temporarily by agencies during the pendency of the Order. These supervisory requirements are intended to prevent additional violations from occurring and to ensure that any deficiencies in the Respondent's practice can be discovered quickly and remediated appropriately. The Board also finds that the Respondent should be required to inform her employers of this Order and to submit quarterly employer reports to the Board so the Board can monitor the Respondent's progress and completion of the Order. These requirements are consistent with 22 Tex. Admin. Code §213.33(e)(3)⁶.

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

¹ See 22 Tex. Admin. Code §213.33(b).

² See page 5 of the PFD.

³ See *id.*

⁴ See *id.*

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 22 Tex. Admin. Code §213.33(e)(3), which authorizes reasonable probationary stipulations that may include remedial education courses and practice for at least one year under the direction of a nurse designated by the Board, as well as limitations on nursing activities/practice settings.

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

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.

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. EMPLOYMENT REQUIREMENTS

In order to complete the terms of this Order, RESPONDENT must work as a nurse in the State of Texas, providing direct patient care in a clinical healthcare setting, for a minimum of sixty-four (64) hours per month for four (4) quarterly periods [one (1) year] of employment. This requirement will not be satisfied until four (4) quarterly periods of employment as a nurse have elapsed. 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. **Indirect Supervision:** For the duration of employment as a Nurse under this order, 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 of 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.
- D. **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 individual who supervises the RESPONDENT and these reports shall be submitted by the supervising individual to the office of the Board at the end of each three (3) month quarterly period for four (4) quarters [one (1) year] of employment as a nurse.

V. 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 21st day of January, 2021.

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. 507-20-1439 (October 1, 2020)

ACCEPTED
507-20-1439
10/1/2020 10:01 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK



FILED
507-20-1439
10/1/2020 9:56 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Donnie Roland, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 1, 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. 507-20-1439; Texas Board of Nursing v. Hajer Naitamar

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,

Beth Bierman
Administrative Law Judge

BB/tt
Enclosures

xc: JoAnna Starr, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 – **VIA EFILE TEXAS**
Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 (with 1 CD of Hearing on the Merits) – **VIA EFILE TEXAS and INTERAGENCY MAIL**
Marc Meyer, Attorney at Law, 525 Woodland Square Blvd., Suite 250, Conroe, TX 77384 – **VIA EFILE TEXAS**

TEXAS BOARD OF NURSING,
Petitioner

v.

HAJER NAITAMAR,
RN LICENSE NO. 909235,
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) seeks to sanction the Registered Nurse (RN) credential held by Hajer Naitamar (Respondent) because she was disciplined through a Consent Order issued by the State of Michigan Board of Nursing (Michigan Board). Staff seeks a one-year warning order with indirect supervision and required courses in Texas nursing jurisprudence and ethics as the sanction against Respondent. The Administrative Law Judge (ALJ) concludes that Staff met its burden to prove the allegation by a preponderance of the evidence and recommends that the Board issue a warning with stipulations to Respondent.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

The hearing on the merits convened telephonically on August 5, 2020, before ALJ Beth Bierman at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Assistant General Counsel JoAnna Starr represented Staff, and attorney Marc Meyer represented Respondent. The record closed that day after the conclusion of the hearing.

Matters of notice and jurisdiction were undisputed and are therefore set out in the Findings of Fact and Conclusions of Law without further discussion.

II. STAFF'S FORMAL CHARGES AND APPLICABLE LAW

The Texas Nursing Practice Act, found in chapter 301 of the Texas Occupations Code (Code), empowers the Board to discipline licensees for, among other things, revocation,

suspension, or denial of, or any other action relating to, the licensee's license or privilege to practice nursing in another jurisdiction.¹

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, taking into account mitigating and aggravating factors.² The Matrix categorizes violations into tiers, and into sanction levels within tiers, based on the seriousness of the offense and risk of harm to patients or the public. The Matrix also lists certain aggravating and mitigating factors that must be considered. Board Rule 213.33 includes another list of factors that the Board and SOAH must consider in determining the appropriate disciplinary sanction, including evidence of potential harm to patients or the public and evidence of present fitness to practice.³

Staff filed one charge against Respondent. Staff alleges that Respondent was disciplined by a Consent Order with the Michigan Board. The Michigan Board placed Respondent on probation, required her to take nursing education courses, and imposed a fine on or about July 7, 2018,⁴ because the Michigan Board found that on or about August 8-10, 2016, she had increased the dosage of a patient's Propofol drip without a physician's order, failed to notify the attending provider of blood pressure concerns, and failed to check the patient's Richmond Agitation-Sedation Scale (RASS) score when she increased the Propofol dose.⁵ At the time, Respondent was working in a neurotrauma intensive care unit at a facility in Midland, Michigan.⁶ The parties agree that Respondent completed the requirements of the Michigan Board order.⁷

¹ Tex. Occ. Code § 301.452(b)(8).

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

³ 22 Tex. Admin. Code 213.33(c).

⁴ The Consent Order became effective 30 days after it was signed on June 7, 2018. Staff Ex. 7 at 6.

⁵ Staff Ex. 7 at 9-10. Respondent agreed with the findings of the Michigan Board's Administrative Complaint. Staff Ex. at 7 at 6.

⁶ Staff Ex. 7 at 9.

⁷ Respondent was also disciplined by the Florida Board of Nursing for the action taken by the Michigan Board. The parties agreed that Respondent had completed the terms of the Florida order, which was a \$250 fine. The fact that Respondent was disciplined by the Florida Board is not an issue in this case.

A certified copy of the Michigan Board's Consent Order is conclusive evidence of that action.⁸ Staff had the burden of proving its allegations by a preponderance of the evidence.⁹

III. DISCUSSION

Staff called Jolene Zych, PhD, RN, WHNP-BC,¹⁰ Staff's advanced practice nursing consultant, to testify. Staff offered ten exhibits, which were admitted.¹¹ Respondent testified on her own behalf, and offered five exhibits, which were admitted. Elisabeth Lawry, RN, also testified for Respondent.

A. Staff's Testimony and Evidence

Ms. Zych was first licensed by the Texas Board as an Advanced Practice RN in 1999. She is currently a nursing consultant for practice for the Board and has worked for the Board for 21 years. Her resume was admitted as Staff Exhibit 8.

Ms. Zych testified that the appropriate sanction for Respondent's conduct under Code § 301.452(b)(8) would be based on a first-tier offense at Sanction Level 1. She stated that a one-year order with a warning with stipulations was appropriate because of the aggravating factors related to patient vulnerability and risk of harm. Ms. Zych explained that the patient at issue was in the neurotrauma intensive care unit and was on Propofol, a sedative. Consequently, the patient was very ill and could not speak for him/herself. According to Ms. Zych, the next nurse caring for the patient had trouble rousing the patient and was not able to complete a neurological exam on the patient. Ms. Zych testified that Respondent's completion of the Michigan Board order was a mitigating factor in her favor. Ms. Zych said she credited Respondent with the completion of courses required under the Michigan Board order. She contended that Respondent should be required to take courses in Texas nursing jurisprudence and ethics and understanding board orders. Ms. Zych also recommended that Respondent be subject to indirect supervision for one year, and required to notify employers of the board order entered in this case. Ms. Zych opined that incident

⁸ Code § 301.456; Staff Ex. 7.

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ "WHNP-BC" stands for Women's Health Nurse Practitioner-Board Certified.

¹¹ Staff Exhibits 2-4 and 9-10 were admitted only for jurisdictional purposes.

reporting, which would be a lesser level of supervision than indirect supervision, was not appropriate given the facts relating to patient vulnerability and the risk of patient harm.

After hearing Respondent's testimony, Ms. Zych did not modify her recommended sanctions in this case. She noted that the sanction imposed by the Board should be consistent with what was required by Michigan, citing the Board's disciplinary matrix. This would require, she said, a one-year order with indirect supervision and courses in jurisprudence and ethics.

B. Respondent's Testimony and Evidence

Respondent became a licensed RN in Texas in 2016.¹² She worked for Health Trust Nursing Agency in San Antonio, Texas, beginning in October 2016. From January 2019 to present, Respondent has worked for Urgent Care of Texas in Arlington. She works per diem, two days a week, and is usually the only nurse working during the shift because of the low patient numbers. She could not be indirectly supervised under her present work situation. Her supervisor, Dr. Saeed, submitted worksite performance reports to the Michigan Board on Respondent's behalf. He reported her performance as satisfactory, which is the highest category available on the Michigan form.¹³

Respondent stated that she had made mistakes in Michigan, as referenced in the Michigan Board Consent Order. She testified that she would better document issues going forward, and that she would get physician approval or an order before increasing a drug dosage.

Ms. Lawry testified that she worked with Respondent at the Michigan facility. She was not aware of the incident until afterwards. Ms. Lawry testified that Respondent was a very good nurse, and that she had a good professional character. The patients and other nurses liked her, she said. Ms. Lawry's opinion of Respondent was not changed by the fact that the Michigan Board had disciplined Respondent. She believed that Respondent had integrity and was very honest about her skill level.

¹² Staff Ex. 1.

¹³ Respondent Ex. 1.

Melissa Lee, RN, wrote a letter of recommendation.¹⁴ Ms. Lee stated she had worked with Respondent since January 2019, was aware of the Michigan Board sanction, and that the Board was considering whether to sanction Respondent's Texas license. Ms. Lee described Respondent as dependable, an advocate for her patients, and very conscientious when providing care for her patients. She wrote that Respondent was a very good nurse, and was very easy and good to work with.

C. Analysis

Under the applicable statutory provision, the Board only has to show that Respondent was disciplined by another board in order to impose a sanction against her Texas license. It is undisputed that the Michigan Board disciplined Respondent for Respondent's practice at the Michigan facility. The only issue to be decided is the appropriate sanction to impose based on the evidence and applicable law.

Given the evidence presented, the ALJ agrees with Staff that it is appropriate to impose a one-year warning order with indirect supervision and the courses suggested by Ms. Zych. Incident reporting, suggested by Respondent, would not be appropriate given the risk of harm and patient vulnerability at issue in the Michigan Board order, and the facts that: Respondent increased the dosage of Propofol without a physician order; failed to notify the physician of blood pressure concerns; and failed to check the patient's RASS score before administering the drug. These are all very serious actions taken with a very ill and vulnerable patient. While there is no evidence that the patient was harmed, the risk of harm was present. Respondent completed the terms of the Michigan Board order, which is a mitigating factor in her favor.

Therefore, based on the evidence and applicable laws, the ALJ finds that sanction of warning with stipulations is most appropriate under Code § 301.452(b)(8) due to patient vulnerability and the risk of patient harm under the facts of this case.

In support of the recommended sanction, the ALJ makes the following findings of fact and conclusions of law.

¹⁴ Respondent Ex. 5.

IV. FINDINGS OF FACT

1. Hajer Naitamar (Respondent) was issued Registered Nurse (RN) License No. 909235 by the Texas Board of Nursing (Board) in 2016.
2. On or about August 8-10, 2016, Respondent was employed as a nurse at a facility in Midland, Michigan, in the neurotrauma intensive care unit.
3. On or about August 8-10, 2016, Respondent treated a patient who was in the neurotrauma intensive care unit and was on Propofol, a sedative. The patient was very ill and could not speak for him/herself.
4. Respondent increased the dosage of the patient's Propofol drip without a physician's order, failed to notify the attending provider of blood pressure concerns, and failed to check the patient's Richmond Agitation-Sedation Scale (RASS) score when she increased the Propofol dose.
5. The next nurse caring for the patient had trouble rousing the patient and was not able to complete a neurological exam on the patient.
6. The Michigan Board of Nursing (Michigan Board) investigated the incident. On or about June 7, 2018, the Michigan Board and Respondent entered into a Consent Order. Under that Consent Order, which became effective on or about July 7, 2018, Respondent stipulated to the findings of the Administrative Complaint and the Michigan Board imposed a one-year probation with stipulations and a fine against Respondent.
7. Respondent completed the terms of the Michigan Board Consent Order, which is a mitigating factor in her favor.
8. On December 2, 2019, Staff docketed this case at the State Office of Administrative Hearings (SOAH) for assignment of an Administrative Law Judge (ALJ) and filed formal charges against Respondent.
9. On July 20, 2020, Staff sent Respondent Staff's Fourth Amended Notice of Hearing and Formal Charges. Together these documents 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.
10. The hearing was convened by telephone on August 5, 2020, with ALJ Beth Bierman presiding. Assistant General Counsel JoAnna Starr represented Staff. Attorney Marc Meyer represented Respondent. The hearing concluded and the record closed that day.

V. CONCLUSIONS OF LAW

1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code ch. 301.
2. SOAH 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 had the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction because she was sanctioned by the Michigan Board through a Consent Order effective on or about July 7, 2018. Tex. Occ. Code § 301.452(b)(8).
6. The Board may impose a disciplinary sanction, which can range from remedial education to revocation of a nurse's license, and which may include assessment of a fine. Tex. Occ. Code § 301.453; 22 Tex. Admin. Code § 213.33(e).
7. 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. In this case, the Board may consider as aggravating factors patient vulnerability and the risk of patient harm under the facts of this case. The Board may consider as a mitigating factor the fact that Respondent has completed the Michigan Board order.

VI. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board sanction Hajer Naitamar, RN License No. 909235, with a warning with stipulations including: (1) Respondent be required to be indirectly supervised for one year; (2) Respondent complete a course in nursing jurisprudence and ethics; and (3) such other stipulations as the Board deems appropriate.

SIGNED October 1, 2020.

/s/ Beth Bierman
Administrative Law Judge
State Office of Administrative Hearings