



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 O'Hanrahan
Executive Director of the Board

DOCKET NUMBER 507-20-2475

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE		
NUMBER 142668,	§	OF
ISSUED TO		
CLEO LINN FREDRICKS	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: CLEO LINN FREDRICKS
PO BOX 582
SAN RAMON, CA 94583

PO BOX 5551
ROUND ROCK, TX 78683

SARAH STARNES
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 ALJ found that the Respondent's conduct warrants a second tier, sanction level I sanction for her violation of §301.452(b)(8)¹. Licensure revocation is authorized under a second tier, sanction level I sanction². The Board agrees with the ALJ that licensure revocation is the most appropriate sanction in this case.

The Respondent's conduct was serious and caused injury to the victim of the assault, which resulted in the Respondent's licensure revocation in California³. Further, the California Board Order was entered after a contested case hearing, in which the Respondent appeared and defended herself⁴.

The Respondent provided evidence that between 1996 and 2017, she received positive performance evaluations from at least two employers, and has been praised by several coworkers and patients for her nursing skills and positive attitude⁵.

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), that licensure revocation is the most appropriate sanction in this matter.

IT IS, THEREFORE, ORDERED THAT Permanent Certificate Number 142668, previously issued to CLEO LINN FREDRICKS, to practice nursing in the State of Texas be, and the same is hereby, REVOKED.

IT IS FURTHER ORDERED that this Order SHALL be applicable to Respondent's multi-state privileges, if any, to practice nursing in the State of Texas.

FURTHER, pursuant to the Occupations Code §301.467, RESPONDENT is not eligible to petition for reinstatement of licensure until at least one (1) year has elapsed from the date of this Order. Further, upon petitioning for reinstatement, RESPONDENT must satisfy all then existing requirements for relicensure.

¹ See page 10 of the PFD.

² See 22 Tex. Admin. Code §213.33(b).

³ See page 10 of the PFD.

⁴ See adopted Finding of Fact Number 13.

⁵ See adopted Finding of Fact Number 15.

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. 507-20-2475 (November 5, 2020)

ACCEPTED
507-20-2475
11/5/2020 4:43 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK



FILED
507-20-2475
11/5/2020 3:31 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 5, 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. 507-20-2475; Texas Board of Nursing v. Cleo Linn Fredricks

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,

Sarah Starnes
Administrative Law Judge

SS/lt
Enclosures

xc: Helen Kelley, 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**
Cleo L. Fredricks, P.O. Box 582, San Ramon, CA 94583 – **VIA EFILE TEXAS**
Cleo L. Fredricks, P.O. Box 5551, Round Rock, TX 78683 – **VIA EFILE TEXAS**

SOAH DOCKET NO. 507-20-2475

TEXAS BOARD OF NURSING,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
CLEO LINN FREDRICKS, LVN,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the licensed vocational nurse (LVN) credential held by Cleo Linn Fredricks (Respondent) because her license to practice vocational nursing has been revoked in another jurisdiction. The Administrative Law Judge (ALJ) concludes that Staff met its burden of proving Respondent's Texas license is subject to discipline and recommends that the license be revoked.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were undisputed and are set out in the Findings of Fact and Conclusions of Law without further discussion here. On October 15, 2020, ALJ Sarah Starnes convened a telephonic hearing before the State Office of Administrative Hearings (SOAH) in Austin, Texas. Assistant General Counsel Helen Kelley represented Staff. Respondent appeared and represented herself. The record closed at the conclusion of the hearing that day.

II. APPLICABLE LAW

The Texas Nursing Practice Act (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 person's license or privilege to practice nursing in another jurisdiction or under federal law."¹

¹ Tex. Occ. Code § 301.452(b)(8).

The Board has a Disciplinary Matrix that the Board and SOAH are required to use in all disciplinary matters.² The Disciplinary 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 Disciplinary 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 actual or potential harm to patients or the public, evidence of present fitness to practice, and threat to public safety.³

In the Disciplinary Matrix, the Board has specified that a disciplinary action taken against a nurse in another jurisdiction may be a First Tier offense if the action resulted from “a default order issued due to the nurse’s failure to answer violations,” or if the action is based solely on alcohol or substance misuse. A disciplinary action in another jurisdiction is a Second Tier offense if the action is a “revocation . . . based on practice violations or unprofessional conduct that could result in [a] similar sanction (revocation) in Texas.”⁴ If the Second Tier offense falls within Sanction Level I, the recommended sanction is “revocation, denial of licensure or voluntary surrender.” In Sanction Level II, the recommended sanction is emergency suspension of the nurse’s license, which may ultimately result in revocation.⁵ As aggravating circumstances that may warrant a more serious sanction, the Disciplinary Matrix lists factors including the nature and seriousness of the violation in the other jurisdiction, the risk of harm associated with the violation, and whether there was criminal conduct.⁶ Mitigating circumstances include the reason why a default order was entered against the nurse in the other jurisdiction (*i.e.*, not a result of “conscious indifference”), and whether the nurse had a meritorious defense against the unanswered violations found in a default order.⁷

² 22 Tex. Admin. Code § 213.33(b).

³ 22 Tex. Admin. Code § 213.33(c).

⁴ 22 Tex. Admin. Code § 213.33(b).

⁵ 22 Tex. Admin. Code § 213.33(b).

⁶ 22 Tex. Admin. Code § 213.33(b).

⁷ 22 Tex. Admin. Code § 213.33(b).

Staff has the burden of proving its allegations by a preponderance of the evidence.⁸

III. EVIDENCE

Staff had three exhibits admitted into evidence, including Respondent's licensure record with the Board, correspondence relating to the Board's investigation, and records from a 2019 administrative proceeding that resulted in revocation of Respondent's California nursing license.⁹ Staff did not present any witness testimony. Respondent testified on her own behalf and also presented a written statement that was admitted into evidence which attached additional records relating to the California proceeding.

A. Staff's Evidence

Staff's exhibits show that Respondent has been licensed as a vocational nurse in Texas since July 1993.¹⁰ She also held a vocational nurse license in California, issued in June 1992.¹¹

On August 1, 2018, the Executive Officer of the California Department of Consumer Affairs, Board of Vocational Nursing and Psychiatric Technicians (California Board) filed a formal Accusation against Respondent alleging that Respondent had assaulted a fellow employee and the assault constituted unprofessional conduct.¹² A hearing was held on March 18, 2019, before an ALJ with the California Office of Administrative Hearings, and Respondent appeared

⁸ 1 Tex. Admin. Code § 155.427.

⁹ Staff Exs. 1-3. Staff's substantive exhibits relating to the California proceeding were attached to its Notice of Hearing to Respondent. The Notice of Hearing and attachments were admitted as Staff Exhibit 3.

¹⁰ Staff Ex. 1.

¹¹ Staff Ex. 3 at 19.

¹² Staff Ex. 3 at 19-22.

and represented herself.¹³ The California ALJ issued a Proposed Decision on April 8, 2019,¹⁴ and the California Board adopted the Proposed Decision on April 26, 2019.¹⁵

In the Proposed Decision, which the California Board adopted without any changes or additions, the California ALJ concluded that Respondent had engaged in unprofessional conduct by committing an assault and battery against another nurse on February 3, 2015, while they were both employed by Kindred Rehabilitation Hospital in San Leandro, California.¹⁶ The victim of the assault—referred to in the decision as A.P.M.—was the hospital’s union shop steward. A.P.M. was asked to escort Respondent to a nearby lab for drug and alcohol screening after Respondent’s supervisors observed Respondent behaving unusually at work, “repeatedly opening cabinet drawers when asked to stop and verbalizing nonsensical words and phrases.”¹⁷ Respondent initially consented to be tested and let A.P.M. drive her to the testing facility. However, once inside the testing facility, Respondent “surprisingly grabbed the car key to [A.P.M.’s] vehicle and tried to leave.”¹⁸ When A.P.M. attempted to recover her car key, Respondent “threw her arm around the neck of Ms. A.P.M. and placed the victim in a ‘headlock’ and then [R]espondent used her other hand to cover the mouth of Ms. A.P.M. to silence the victim’s screams and cries for help.”¹⁹ Two male bystanders intervened to try to pull Respondent off of A.P.M., and one of them began to punch Respondent’s arm to get her to release A.P.M.²⁰

Police were called and they placed Respondent under arrest and also “noted her to be subject to Welfare and Institutions Code section 5150 involuntary hold because [R]espondent

¹³ Staff Ex. 3 at 10.

¹⁴ Staff Ex. 3 at 10-18.

¹⁵ Staff Ex. 3 at 9.

¹⁶ Staff Ex. 3 at 11.

¹⁷ Staff Ex. 3 at 11.

¹⁸ Staff Ex. 3 at 11.

¹⁹ Staff Ex. 3 at 12. The California ALJ noted that A.P.M. was nearly a foot shorter and weighed about 50 pounds less than Respondent. Staff Ex. 3 at 15.

²⁰ Staff Ex. 3 at 12.

appeared to be a danger to herself or others.”²¹ Respondent was transported to another testing facility for alcohol and drug screening, and she tested negative for illicit drugs or alcohol.²² The criminal charges against Respondent were dropped after she completed treatments ordered by the Mental Health Court.²³ Respondent was terminated from her position at Kindred Rehabilitation Hospital effective February 9, 2015, for violating the hospital’s Workplace Violence Policy.²⁴

As described in the California Decision, Respondent’s assault caused permanent injury to A.P.M.’s cervical spine. Despite three surgical procedures, A.P.M. continued to experience chronic neck pain and a limited range of motion.²⁵ A.P.M. suffered permanent disabilities and was never able to return to full-time work as an LVN following the assault.²⁶

The California ALJ found that Respondent “gave false and misleading testimony” and “wholly lacked credibility” when she claimed at the hearing that A.P.M. was the aggressor and Respondent had only defended herself against A.P.M.²⁷ In adopting the Proposed Decision, the California Board concluded that there was clear and convincing evidence Respondent had engaged in unprofessional conduct, and ordered that her license be revoked.²⁸

After Respondent filed a Petition for Reconsideration, the California Board delayed the effective date of its decision.²⁹ Subsequently, on May 30, 2019, the California Board denied the

²¹ Staff Ex. 3 at 12.

²² Staff Ex. 3 at 12-13.

²³ Staff Ex. 3 at 13.

²⁴ Staff Ex. 3 at 12.

²⁵ Staff Ex. 3 at 12.

²⁶ Staff Ex. 3 at 13.

²⁷ Staff Ex. 3 at 15.

²⁸ Staff Ex. 3 at 17-18.

²⁹ Staff Ex. 3 at 8.

Petition for Reconsideration, and the Decision revoking Respondent's California license became final effective June 8, 2019.³⁰

In July 2019, the Board initiated an investigation of Respondent after learning that her California vocational nursing license had been revoked.³¹ Formal Charges were filed in September 2019,³² and this proceeding ensued.

B. Respondent's Evidence

In her testimony and written statement, Respondent denied assaulting A.P.M. and argued that the allegations against her were illogical and unfounded. She claimed she had quit her job "just prior to the alleged incident on February 3, 2015," and therefore was acting in the capacity of a patient, not a nurse, during her altercation with A.P.M.³³ Respondent also argued she had no logical need to take A.P.M.'s car key because A.P.M. had a legal duty to take her back to the hospital.³⁴ Respondent said she objected to the drug-testing facility because Kindred Rehabilitation Hospital had "no probable cause" to test her, and because "the lab in question fell below the standard of care required to perform the pertinent lab test."³⁵ Respondent also argued that police had falsely arrested her and that police and the California Board had improperly relied on A.P.M.'s statements instead of believing Respondent's version of events.³⁶

Respondent argued that both Staff and the California Board have improperly disregarded evidence of her innocence. She submitted an email, dated March 4, 2019, where an expert associated with the California Office of the Attorney General expressed doubt that there would be

³⁰ Staff Ex. 3 at 7.

³¹ Staff Ex. 2.

³² Staff Ex. 3 at 5-6.

³³ Resp. Ex. 1 at 3.

³⁴ Resp. Ex. 1 at 3.

³⁵ Resp. Ex. 1 at 6.

³⁶ Resp. Ex. 1 at 3-5.

“sufficient evidence to substantiate unprofessional conduct.”³⁷ From the email, it is not clear what documents the expert was reviewing or the extent of her involvement with the case. Respondent also claimed she was “exonerated” by an ALJ with the California Unemployment Insurance Appeals Board, Oakland Office of Appeals, who issued a decision dated July 16, 2015, finding that A.P.M. had been the aggressor several years before the California Board’s hearing and contrary determination.³⁸ Before the Unemployment Insurance Appeals Board, Respondent appealed a determination that she was ineligible for unemployment benefits, and the ALJ was asked to determine whether Respondent had voluntarily resigned from Kindred Rehabilitation Hospital or whether she had been discharged for misconduct.³⁹ Respondent was the only party who appeared at the unemployment appeal hearing, and that ALJ found her testimony more credible than the documents submitted by the agency in support of its decision to deny benefits.⁴⁰ Based on Respondent’s testimony, the ALJ found that Respondent’s co-worker (A.P.M.) had initiated their physical altercation.⁴¹ The ALJ also found that Respondent had good cause for resigning under the circumstances and was therefore eligible to receive unemployment insurance benefits.⁴²

Respondent also pointed out that the Board investigated allegations relating to her arrest in California and determined, in April 2019, that no disciplinary action was required.⁴³ In her testimony, she expressed dismay that the Board had started a new investigation in July 2019, after “clearing” her without disciplinary action in April.⁴⁴

³⁷ Resp. Ex. 1 at 16.

³⁸ Resp. Ex. 1 at 4.

³⁹ Resp. Ex. 1 at 9.

⁴⁰ Resp. Ex. 1 at 8, 11.

⁴¹ Resp. Ex. 1 at 9.

⁴² Resp. Ex. 1 at 11.

⁴³ Resp. Ex. 1 at 4, 13.

⁴⁴ The evidence indicates that there was a prior Board investigation relating to the criminal charges that had been brought against Respondent in California. In cross-examining Respondent, Staff pointed out that the April 2019 letter, which concluded the prior investigation, was sent after the criminal charges against Respondent were dismissed but before the California Board revoked her nursing license in that state.

Respondent's evidence also included the following praise for her nursing practice:

- A Center for Discovery performance evaluation, dated March 13, 2017, rated Respondent's work performance as an LVN very highly;⁴⁵
- In a letter dated October 21, 2014, the President and CEO of Alta Bates Summit Medical Center informed Respondent that a patient had written a letter praising the excellent care she had provided;⁴⁶
- In a letter dated March 2, 2009, a co-worker at the California State Prison-Sacramento described Respondent as a responsible and efficient nurse with a good attitude;⁴⁷
- In a letter dated April 15, 2002, an Administrative Coordinator for Southwest Airlines thanked Respondent for her help with an onboard medical emergency during a flight several months earlier, and offered her a free roundtrip pass;⁴⁸
- An undated form titled "Caught in the Act of Caring" praised Respondent for working a double shift and making a difficult night pleasant;⁴⁹ and
- A MedStaff employee evaluation dated December 17, 1996, indicated that Respondent exceeded expectations in her work as an LVN.⁵⁰

IV. ANALYSIS

The evidence establishes that, effective June 8, 2019, the California Board revoked Respondent's license to practice vocational nursing in that state. Although Respondent disputes the factual basis for the California Board's decision, she cannot collaterally attack that agency's final order in this proceeding. Therefore, Staff has met its burden of proving that Respondent's Texas license is subject to disciplinary action pursuant to Code § 301.452(b)(8), which authorizes discipline when a nurse's license has been revoked in another jurisdiction.

⁴⁵ Resp. Ex. 1 at 17-19.

⁴⁶ Resp. Ex. 1 at 21.

⁴⁷ Resp. Ex. 1 at 20.

⁴⁸ Resp. Ex. 1 at 22.

⁴⁹ Resp. Ex. 1 at 23.

⁵⁰ Resp. Ex. 1 at 24.

In sanctioning pursuant to Code § 301.452(b)(8), the Disciplinary Matrix specifies that revocation in another jurisdiction is deemed a First Tier offense only if the other jurisdiction's order was entered on a default basis, or the order was based on alcohol or substance misuse.⁵¹ Neither circumstance applies here. Respondent appeared before the California Board and vigorously disputed the claims against her, so the California revocation was not ordered on a default basis. Further, although the assault that led to the revocation of Respondent's California license was triggered by a conflict over a drug test, the evidence shows that her drug screens that day were negative for illicit drugs and alcohol. Therefore, Respondent's violation is not a First Tier offense.

The Second Tier applies where a license has been "revok[ed] in another jurisdiction based on practice violations or unprofessional conduct that could result in similar sanction (revocation) in Texas."⁵² Respondent's California license was revoked based on a finding that she engaged in unprofessional conduct by assaulting another nurse. In Texas, the Board can sanction a nurse's license for unprofessional conduct, which is defined in the Board's rules to include both causing "physical . . . abuse or injury . . . to the client or the public" and "[t]hreatening or violent behavior in the workplace."⁵³ Under the Disciplinary Matrix, unprofessional conduct resulting in serious patient harm or that involves physical abuse of a patient is a Third Tier offense that, even at the lowest sanction level, results in denial or revocation of a nursing license.⁵⁴ Though Respondent assaulted and injured a fellow nurse, not a patient, the ALJ finds that this sanction level would most likely apply if the California proceeding had been brought in Texas. Thus, the unprofessional conduct found by the California Board would likewise be sanctionable in Texas and would result

⁵¹ 22 Tex. Admin. Code § 213.33(b).

⁵² 22 Tex. Admin. Code § 213.33(b).

⁵³ Tex. Occ. Code § 301.452(b)(10); 22 Tex. Admin. Code § 217.12(6)(C), (F).

⁵⁴ 22 Tex. Admin. Code § 213.33(b).

in a similar sanction in this state. Respondent's violation is therefore a Second Tier offense under the Disciplinary Matrix.

Within the Second Tier, the lowest sanction available is Sanction Level I, which suggests revocation of Respondent's license.⁵⁵ Because the California Board's order was entered after a contested-case hearing, none of the mitigating circumstances listed in the Disciplinary Matrix—which apply only to underlying default proceedings—are applicable. However, the evidence has established aggravating circumstances, including the seriousness of the violation in the other jurisdiction and the actual harm that resulted to the victim of the assault that led to the revocation of Respondent's California license.⁵⁶ Therefore, there is no basis for reducing the sanction recommended in the Disciplinary Matrix. The ALJ agrees with Staff that the California Board's revocation order constitutes a Second Tier, Sanction Level I violation of Code § 301.452(b)(8), and the ALJ recommends revocation of Respondent's Texas license for the violation.

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

V. FINDINGS OF FACT

1. Cleo Linn Fredricks (Respondent) holds Licensed Vocation Nurse (LVN) license No. 142668, issued by the Texas Board of Nursing (Board) on July 21, 1993.
2. Respondent formerly held a vocational nurse license in California, issued in June 1992.
3. On August 1, 2018, the Executive Officer of the California Department of Consumer Affairs, Board of Vocational Nursing and Psychiatric Technicians (California Board) filed a formal Accusation against Respondent alleging that Respondent had assaulted her co-worker, a fellow nurse, and the assault constituted unprofessional conduct.
4. A hearing was held on March 18, 2019, before an Administrative Law Judge (ALJ) with the California Office of Administrative Hearings, and Respondent appeared and represented herself. The California ALJ issued a Proposed Decision on April 8, 2019, and

⁵⁵ 22 Tex. Admin. Code § 213.33(b).

⁵⁶ 22 Tex. Admin. Code § 213.33(b)-(c).

the California Board adopted the Proposed Decision on April 26, 2019, without any changes or additions.

5. The California ALJ found that Respondent committed an assault and battery against another nurse on February 3, 2015, while they were both employed with Kindred Rehabilitation Hospital in San Leandro, California.
6. The assault occurred when a co-worker was asked to transport Respondent to a lab for drug and alcohol screening after Respondent's supervisors observed Respondent behaving erratically at work. At the testing facility, Respondent grabbed the co-worker's car key and tried to leave, then assaulted the co-worker when she tried to recover her key.
7. The victim of Respondent's assault suffered serious, permanent injuries to her cervical spine and was never able to return to full-time work as an LVN.
8. Respondent was arrested for the assault and was placed on an involuntary psychiatric hold. She tested negative for illegal drugs or alcohol that day.
9. The criminal charges against Respondent were dropped after she completed treatments ordered by the Mental Health Court.
10. At the administrative hearing in California, Respondent claimed her co-worker had attacked her and she acted only in self-defense. The California ALJ found that Respondent's testimony was false, misleading, and "wholly lacked credibility."
11. In adopting the California ALJ's Proposed Decision, the California Board concluded that there was clear and convincing evidence Respondent had engaged in unprofessional conduct, and ordered that her license be revoked.
12. On May 30, 2019, the California Board denied Respondent's Petition for Reconsideration, and the Decision revoking Respondent's California license became final effective June 8, 2019.
13. The California Board's revocation decision was not ordered on a default basis. Respondent appeared and vigorously disputed the claims against her.
14. In a separate administrative proceeding several years earlier, an ALJ with the California Unemployment Insurance Appeals Board, Oakland Office of Appeals found that Respondent's co-worker had initiated their physical altercation, that Respondent had good cause for leaving her employment with Kindred Rehabilitation Hospital, and Respondent was therefore eligible to receive unemployment insurance benefits. Respondent was the only party who appeared at the unemployment appeal hearing.
15. Respondent presented evidence that, between 1996 and 2017, she has received positive performance evaluations from at least two employers, and has been praised by several coworkers and patients for her nursing skills and positive attitude.

16. In July 2019, the Board initiated an investigation of Respondent after learning that her California vocational nursing license had been revoked. Formal Charges were filed in September 2019, and this proceeding ensued.
17. On February 6, 2020, Staff docketed this case at the State Office of Administrative Hearings (SOAH) in Austin, Texas.
18. On September 11, 2020, Staff sent Respondent a First Amended Notice of Hearing and Formal Charges. 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.
19. On October 15, 2020, ALJ Sarah Starnes convened a telephonic hearing before SOAH. Assistant General Counsel Helen Kelley represented Staff. Respondent appeared and represented herself. The record closed at the conclusion of the hearing that day.

VI. CONCLUSIONS OF LAW


1. The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code (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. Code § 301.459; Tex. Gov't Code ch. 2003.
3. Respondent received adequate and proper notice of the hearing on the merits. 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. Because Respondent's California nursing license was revoked, the Board may take disciplinary action against her Texas nursing license. Tex. Occ. Code § 301.452(b)(8).
6. To determine the appropriate disciplinary sanction to be imposed in this case, the Board must consider the factors, including aggravating and mitigating circumstances, set forth in 22 Texas Administrative Code § 213.33(c) and the Board's Disciplinary Matrix. 22 Tex. Admin. Code § 213.33(b).
7. In a Texas proceeding, assaulting and injuring a co-worker would constitute unprofessional conduct that could result in revocation of a Texas nursing license. Tex. Occ. Code § 301.452(b)(10); 22 Tex. Admin. Code §§ 213.33(b), 217.12(6)(C), (F).

8. Respondent's conduct most appropriately falls in the Second Tier, Sanction Level I of the Disciplinary Matrix under Code § 301.452(b)(8), 22 Texas Admin. Code § 213.33(b).

VII. RECOMMENDATION

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

SIGNED November 5, 2020.



SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS