



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. Williams
Executive Director of the Board

DOCKET NUMBER 507-21-3001

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE		
NUMBER 326589,	§	OF
ISSUED TO		
AMBER LEE CURETON	§	ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: AMBER LEE CURETON
1446 WEST SABINE ST.
CARTHAGE, TX 75633

PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on October 21, 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 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. 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 326589, previously issued to AMBER LEE CURETON, 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 21st day of October, 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. 507-21-3001 (September 1, 2021)

FILED
507-21-3001
9/1/2021 12:54 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

SOAH DOCKET NO. 507-21-3001

ACCEPTED
507-21-3001
09/01/2021 1:12 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

TEXAS BOARD OF NURSING,
Petitioner,

v.

AMBER LEE CURETON, 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 Amber Lee Cureton (Respondent) because she received two Orders of Deferred Adjudication (Orders) for Abandon Endanger Child Imminent Danger, a second degree felony offense and a violation of Texas Penal Code § 22.041. Staff filed a Motion for Summary Disposition (MSD) requesting a proposal for decision in its favor as a matter of law. Respondent did not file a response. After considering the 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 **October 14, 2021**, is **CANCELED**.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On July 28, 2021, Staff referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing, and filed and served Respondent with Formal Charges. On July 29, 2021, Staff filed and served its Notice of Hearing and its MSD and supporting evidence. Respondent did not file a response.¹

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.

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).

II. SUMMARY DISPOSITION EVIDENCE

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

- The Board issued LVN license number 326589 to Respondent on September 13, 2018.²
- On January 2, 2020, in Case No. 2019-C-140 in the 123rd District Court, Panola County, Texas, the court issued an Order of Deferred Adjudication to Respondent for one count of the second degree felony offense of Abandon Endanger Child Imminent Danger, a violation of Texas Penal Code § 22.041(e). The offense was committed on July 26, 2019. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on seven years of community supervision.³
- On January 2, 2020, in Case No. 2019-C-141 in the 123rd District Court, Panola County, Texas, the court issued a second Order of Deferred Adjudication to Respondent for one count of the second degree felony offense of Abandon Endanger Child Imminent Danger, a violation of Texas Penal Code § 22.041(e). The offense was committed on July 26, 2019. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on seven years of community supervision.⁴

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.⁵

² Staff Ex. A.

³ Staff Ex. B.

⁴ Staff Ex. B.

⁵ 1 Tex. Admin. Code § 155.505(a).

In seeking disciplinary action against Respondent, Staff relies on Texas Occupations Code (Code) § 301.4535. Section 301.4535(a)(8) provides that the Board is required to suspend a nurse's license if the nurse has been initially convicted of a listed offense, including intentionally, knowingly, or recklessly abandoning or endangering a child under § 22.041 of the Texas Penal Code.⁶ Section 301.4535(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."⁷

Texas Penal Code § 22.041(b) provides that a person commits an offense if, having custody, care, or control of a child younger than 15 years of age, the person intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm. Texas Penal Code § 22.041(e), cited by the court in the Orders, classifies an offense under Texas Penal Code § 22.041(b) as a second degree felony if the person abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.⁸

IV. ANALYSIS AND RECOMMENDATION

The uncontroverted summary disposition evidence shows that two Orders of Deferred Adjudication were issued to Respondent on January 2, 2020, each for one count of the second degree felony of Abandon Endanger Child Imminent Danger.⁹ The Orders do not specify whether Respondent entered a plea of guilty or nolo contendere.¹⁰ However, the court could not have placed Respondent on deferred adjudication community supervision in the absence of such a plea. Article 42A.(101)(a) of the Code of Criminal Procedure provides:

⁶ Code § 301.4535(a)(8).

⁷ Code § 301.4535(b).

⁸ Tex. Penal Code § 22.041(e). Section 22.041 was amended recently, but the amendments do not take effect until September 1, 2021, and do not apply to crimes committed prior to that date.

⁹ Staff Ex. B.

¹⁰ Staff Ex. B. On each Order, there is a section that states, "Defendant waived the right to trial by jury and entered the plea below:" but no plea is specified.

[I]f in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on deferred adjudication community supervision.¹¹

Therefore, despite the clerical omission, the Orders could not have been issued without the judge's receipt of a plea of guilty or nolo contendere from Respondent for each count.

The Orders cite Texas Penal Code § 22.041(e). That section provides that an offense under § 22.041(b) is a second degree felony if, under the circumstances, a reasonable person would believe the child was in imminent danger of death, bodily injury, or physical or mental impairment. In turn, § 22.041(b) applies to a person who "intentionally" abandons a child. Respondent's offenses are intentional as described by Code § 301.4535(a)(8). Therefore, as a matter of law, Respondent's LVN license is subject to mandatory revocation under Code § 301.4535(b).

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. The Texas Board of Nursing (Board) issued licensed vocational nurse (LVN) license number 326589 to Amber Lee Cureton (Respondent) on September 13, 2018.
2. On January 2, 2020, in Case No. 2019-C-140 in the 123rd District Court, Panola County, Texas, the court issued an Order of Deferred Adjudication to Respondent for one count of the second degree felony offense of Abandon Endanger Child Imminent Danger, a violation of Texas Penal Code § 22.041(e). The offense was committed on July 26, 2019. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on seven years of community supervision.
3. On January 2, 2020, in Case No. 2019-C-141 in the 123rd District Court, Panola County, Texas, the court issued a second Order of Deferred Adjudication to Respondent for one

¹¹ Article 42A.101(a) begins by stating, "Except as provided by Article 42A.102(b)" The exception relates to a requirement that the judge inform the defendant of the consequences of a violation of a condition of deferred adjudication community supervision, and is not relevant to this case.

count of the second degree felony offense of Abandon Endanger Child Imminent Danger, a violation of Texas Penal Code § 22.041(e). The offense was committed on July 26, 2019. The court found that the evidence substantiated Respondent's guilt but deferred adjudication of the case and placed Respondent on seven years of community supervision.

4. On July 28, 2021, the Board's staff (Staff) referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing, and filed and served Respondent with Formal Charges.
5. On July 29, 2021, Staff filed and served its Notice of Hearing on Respondent, stating that a hearing was scheduled for October 14, 2021. 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.
6. On July 29, 2021, Staff filed and served Respondent with Staff's Motion for Summary Disposition and supporting evidence.
7. Respondent did not file a response.

VI. CONCLUSIONS OF LAW

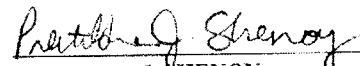
1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 301.454.
3. Respondent 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. Abandoning or endangering a child is an offense under Texas Penal Code § 22.041.
6. A second degree felony of Abandoning or Endangering Child requires that the offense be committed intentionally. Tex. Penal Code § 22.041(b), (e).

7. Respondent's LVN license is subject to mandatory revocation. Tex. Occ. Code § 301.4535(a)(8), (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 September 1, 2021.


PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS