



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. Thomas
Executive Director of the Board

DOCKET NUMBER 507-20-4429

IN THE MATTER OF § BEFORE THE STATE OFFICE
PERMANENT CERTIFICATE § OF
NUMBER 876115, §
ISSUED TO
MARIA EUGENIA FLORES DALTON § ADMINISTRATIVE HEARING.

OPINION AND ORDER OF THE BOARD

TO: MARIA EUGENIA FLORES DALTON
C/O ELIZABETH HIGGINBOTHAM,
ATTORNEY
HIGGINBOTHAM & ASSOCIATES, LLC
ONE CASTLE HILLS
1100 NW LOOP 410, STE 700
SAN ANTONIO, TX 78213

DEE MARLO CHICO
ADMINISTRATIVE LAW JUDGE
300 WEST 15TH STREET
AUSTIN, TEXAS 78701

At the regularly scheduled public meeting on January 20, 2022, 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 constitutes a violation of Texas Occupations Code §301.452(b)(10) and (13)¹ and that a sanction analysis of either code violation would render the same result for purposes of a sanction determination². The ALJ conducted a sanction analysis of Respondent's violations of §301.452(b)(13) and found that Respondent's conduct warrants a second tier, sanction level one sanction for those violations³. The Board agrees with the ALJ's analysis in this regard and further concludes that the Respondent's conduct also constitutes a second tier, sanction level one sanction for her violations of §301.452(b)(10) based upon the aggravating and mitigating factors found by the ALJ and the ALJ's sanction analysis contained in the PFD.

Although the ALJ found several mitigating factors to be present in this case, the ALJ noted, and the Board agrees, that these mitigating factors do not excuse the Respondent's actions⁴. The Respondent committed multiple violations that posed a risk of harm to vulnerable patients⁵. The ALJ also found mitigating factors. There was no actual harm to the patients; there were systems issues present, including volume of patients, inexperience of staff, and persistent staff changes; the Respondent was a novice nurse and inexperienced when the conduct occurred; the Respondent has no prior disciplinary history; and the Respondent provided letters of recommendation attesting to her good character, dedication, and work ethic⁶.

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 a Warning with Stipulations is the most appropriate sanction in this matter. The ALJ has recommended several specific stipulations⁷, as well as any additional stipulations the Board deems appropriate to impose. The Board agrees with the ALJ's suggested stipulations.

Consistent with the ALJ's recommendation, the Board finds that the Respondent should complete courses in nursing jurisprudence and ethics; documentation; critical thinking; professional accountability; and medication administration. 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 also agrees with the ALJ that the Respondent's nursing practice should be indirectly supervised. This supervisory requirement is intended to prevent additional violations from

¹ See page 11 and adopted Conclusion of Law Number 5.

² See page 11 of the PFD.

³ See page 12 of the PFD.

⁴ See page 11 of the PFD.

⁵ See page 12 of the PFD and adopted Conclusion of Law Number 8.

⁶ See page 12 of the PFD and adopted Conclusion of Law Number 9.

⁷ See page 16 of the PFD.

occurring and to ensure that any deficiencies in the Respondent's practice can be discovered quickly and remediated appropriately. Also consistent with the ALJ's recommendation, 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)⁸ and are warranted by the nature of the Respondent's violations.

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

TERMS OF ORDER

I. SANCTION AND APPLICABILITY

- A. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.
- B. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- C. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- D. As a result of this Order, RESPONDENT'S license(s) will be designated "single state" as applicable and RESPONDENT may not work outside the State of Texas in another nurse licensure compact party state using a Texas compact license.

II. 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.

III. UNDERSTANDING BOARD ORDERS

⁸ 22 Tex. Admin. Code §213.33(e)(3) authorizes a Warning with Stipulations to include remedial education courses and practice for not less than one year under the direction of a nurse designated by the Board, as well as limitations on nursing activities/practice settings.

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.

IV. 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. **A Board-approved course in medication administration** with a didactic portion of not less than six (6) hours and a clinical component of not less than twenty-four (24) hours. Both the didactic and clinical components must be provided by the same Registered Nurse. The course's content shall include: a review of proper administration procedures for all standard routes; computation of drug dosages; the six (6) rights of medication administration; factors influencing the choice of route; and possible adverse effects resulting from improper administration. The clinical component SHALL focus on tasks of medication administration only. The course description shall indicate goals and objectives for the course, resources to be utilized, and the methods to be used to determine successful completion of the course. Successful completion of this course requires RESPONDENT to successfully complete both the didactic and clinical portions of the course.

- C. **A Board-approved course in nursing documentation** that shall be a minimum of six (6) hours in length. The course's content shall include: nursing standards related to accurate and complete documentation; legal guidelines for recording; methods and processes of recording; methods of alternative record-keeping; and computerized documentation. Home study courses and video programs will not be approved.
- D. **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.
- E. **The course "Professional Accountability,"** a 4.6 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.*

V. 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:** 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.

VI. RESTORATION OF UNENCUMBERED LICENSE(S)

Upon full compliance with the terms of this Order, all encumbrances will be removed from RESPONDENT'S license(s) and/or privilege(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 20th day of January, 2022.

TEXAS BOARD OF NURSING

A handwritten signature in black ink, appearing to read "Katherine A. Thomas". The signature is written in a cursive style with a large initial 'K'.

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

Attachment: Proposal for Decision; Docket No. 507-20-4429 (October 22, 2021)

FILED
507-20-4429
10/22/2021 12:34 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK



ACCEPTED
507-20-4429
10/22/2021 12:54 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 22, 2021

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. 507-20-4429; Texas Board of Nursing v. Maria Eugenia Flores Dalton

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,

A handwritten signature in black ink, appearing to read "DMChico".

Dee Marlo Chico
Administrative Law Judge

DMC/jh

xc: John Vanderford, 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) – **VIA EFILE TEXAS and INTERAGENCY MAIL**
Elizabeth Higginbotham, R.N., J.D., Higginbotham & Associates, One Castle Hills, 1100 NW Loop 410, Ste. 700, San Antonio, TX 78213 – **VIA EFILE TEXAS**

SOAH DOCKET NO. 507-20-4429

TEXAS BOARD OF NURSING,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
MARIA EUGENIA FLORES DALTON,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

In five separate formal charges, the staff (Staff) of the Texas Board of Nursing (Board) seeks disciplinary actions against the Registered Nurse (RN) credential held by Maria Eugenia Flores Dalton (Respondent). Staff alleges that between September 22, 2016, and February 23, 2017, while employed with Planned Parenthood of Greater Texas (Planned Parenthood), Respondent violated the Texas Nursing Practice Act and Board rules. The Administrative Law Judge (ALJ) concludes that Staff met its burden on all allegations by a preponderance of the evidence and recommends the Board issue a One-Year Warning with terms described below.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

State Office of Administrative Hearings (SOAH) ALJ Meaghan Bailey convened the hearing on the merits by videoconference on August 26, 2021. Assistant General Counsel John Vanderford represented Staff, and attorneys Elizabeth Higginbotham and Thomas Padgett, Jr., represented Respondent. The hearing concluded, and the record closed that day. On September 7, 2021, this case was reassigned to ALJ Dee Marlo Chico, who reviewed the evidence, including the recording of the hearing, and prepared this Proposal for Decision.¹

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

¹ See 1 Tex. Admin. Code § 155.151.

II. STAFF'S FORMAL CHARGES

The allegations contained in Staff's five formal charges are summarized below, and concern Respondent's practice at Planned Parenthood

- **Charge I** – On September 22, 2016, Respondent failed to administer Metronidazole to Patient No. 333256, as ordered.
- **Charge II** – On October 6, 2016, Respondent administered MicRhoGAM to Patient No. 43884, when the physician's order was for RhoGAM, which is a higher dose of medication.
- **Charge III** – On October 21, 2016, Respondent administered MicRhoGAM to Rh-positive Patient No. 440384. The medication is for patients who have Rh-negative blood type.
- **Charge IV** - On December 21, 2016, Respondent administered MicRhoGAM to Patient No. 347701, when the physician's order was for RhoGAM.
- **Charge V** - On February 23, 2017, Respondent failed to document an episode of emesis in the medical record of Patient No. 454073, which occurred after the patient had taken Misoprostol and Metronidazole.

III. 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, unprofessional conduct (Code § 301.452(b)(10)) or practice below minimum standards of nursing care (Code § 301.452(b)(13) (2019)).² Staff asserts Respondent's conduct is grounds for disciplinary action under both Code provisions, as well as pursuant to a number of Board rules.³

With respect to minimum standards of nursing practice, Staff alleges Respondent did not comply with provisions that require a nurse to:

² Code § 301.452(b)(13) (2019 ver., since amended). All citations herein are to this version of the statute. *See* H.B. 1434, 87th Leg., R.S. (2021).

³ For ease of reference, the Board's rules, found in title 22, chapters 211 to 228 of the Texas Administrative Code, shall be referred to in the text as "Board Rule ____."

- **Board Rule 217.11(1)(A):** know and conform to the Act and the Board's rules and regulations as well as all federal, state, or local laws, rules, or regulations affecting the nurse's current area of nursing practice.
- **Board Rule 217.11(1)(B):** implement measures to promote a safe environment for clients and others.
- **Board Rule 217.11(1)(C):** know the rationale for and the effects of medications and treatments and correctly administer the same.
- **Board Rule 217.11(1)(D):** accurately and completely report and document required matters, including client status, care rendered, doctors' orders, medications and treatments administered, client response, and contacts with other members of the health care team.

With respect to unprofessional conduct, Staff claims Respondent failed to comply with:

- **Board Rule 217.12(1)(A):** careless or repeated failure or inability to practice in conformity with minimum standards set out in Board Rule 217.11.⁴
- **Board Rule 217.12(1)(B):** careless or repeated failure to conform to generally accepted nursing standards in applicable practice settings.
- **Board Rule 217.12(4):** careless or repeated conduct that may endanger a client's life, health, or safety, without a requirement that actual injury be shown.

Board Rule 213.33 sets out a disciplinary matrix (Matrix) intended to match the severity of the sanction imposed to the nature of the violation, taking into account mitigating and aggravating factors listed in the Matrix.⁵ 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. 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

⁴ Board Rule 217.12(1)(A), (B) and (4) were revised effective February 25, 2018 and again October 17, 2019. Staff's allegations relate to incidents on or prior to February 23, 2017; therefore, this Proposal for Decision (PFD) cites the former versions of Board Rule 217.12(1)(A), (B), and (4).

⁵ 22 Tex. Admin. Code § 213.33; *see also* Tex. Occ. Code § 301.4531 (requiring the Board to adopt a schedule of sanctions). The Disciplinary Matrix was revised effective April 21, 2019. Pursuant to the Code Construction Act, if a revision of law reduces the penalty or punishment for an offense, the penalty shall be imposed to the statute as amended. *See* Tex. Gov't Code § 311.031(b). However, the revisions to the Disciplinary Matrix do not affect the sanction analysis in this PFD.

to patients or the public and evidence of present fitness to practice.⁶ Staff has the burden of proving its allegations by a preponderance of the evidence, and Respondent has the burden of proving mitigating factors, if any.⁷

III. DISCUSSION

A. Summary of Evidence

Staff offered eight exhibits, all of which were admitted without objection. Respondent's Exhibits R-1, R-2, R-4, R-6 pages 1 through 16, and R-7 were admitted.⁸ Staff called two witnesses: Linda Laws, a nursing practice consultant for the Board, and Jaclyn Keller, a charge nurse at Planned Parenthood whose employment overlapped with Respondent's employment. Respondent testified on her own behalf and called Candice Bliss, a nurse formerly employed at Planned Parenthood before, during, and after Respondent's employment.

A. Evidence

1. Ms. Keller's Testimony

Ms. Keller testified to Planned Parenthood's standing orders, policies, and procedures effective during Respondent's employment. The first of Planned Parenthood's standing orders included requiring all patients undergoing medication abortion to be treated with antibiotics.⁹ A medication abortion involves a two-step process beginning with the administration of Mifepristone (Mifeprex), followed by Misoprostol. Metronidazole is the prophylactic antibiotic usually given to the patient one hour before the procedure. According to Ms. Keller, it is the duty of the nurse to

⁶ 22 Tex. Admin. Code § 213.33(c).

⁷ 1 Tex. Admin. Code § 155.427.

⁸ Respondent's Exhibits R-4 and R-7 were admitted without objections. Respondent withdrew Exhibit R-5. Respondent's Exhibits R-1 and R-2 were admitted as revised — the parties stipulated to the removal of certain pages. ALJ Bailey sustained Staff's objection to Respondent's Exhibit R-3, which was excluded, and to pages 17-18 of Exhibit R-6 pages, the remainder of which was admitted.

⁹ See Staff Exhibit 6 at 3.

ask the patient whether the patient was given Metronidazole, to document the patient's answer, and to verify whether Metronidazole was given one hour before the procedure.

Second, all blood types are either Rh-positive or Rh-negative. MicRhoGAM and RhoGAM are medications that prevent mothers with Rh-negative blood type from making Rh-positive antibodies. The decision as to whether MicRhoGAM or RhoGAM is given is dependent on (1) having an Rh-negative patient and (2) determining the gestational age of the pregnancy. Ms. Keller warned that failure to give the proper medication can potentially affect the mother's next pregnancy. If Rh-positive antibodies are allowed to develop, a subsequent pregnancy with an Rh-positive fetus can end in miscarriage or a fetal anomaly because the mother's Rh-negative blood may attack the pregnancy.

Ms. Keller testified that the difference between MicRhoGAM and RhoGAM is the dosage, which is determined by gestational age per Planned Parenthood's standing orders. Specifically, MicRhoGAM is given for a gestational age of up to 12 weeks; RhoGAM is given for a gestational age of 13 weeks or beyond. According to Ms. Keller, the standing order makes it the nurse's responsibility to determine if the mother is Rh-negative and how far advanced she is in her pregnancy so that the appropriate medication can be administered.

Finally, Ms. Keller defined "emesis" as vomiting. She said that at Planned Parenthood, a nurse must document emesis, especially after giving medication, to ensure the patient received the medication and maintained the efficacy of the medication. This documentation also ensures the rest of the health care team is aware of the situation, as the medication may not work after an episode of emesis.

Using as reference the Medical Incident Reports filled out by Respondent and each patient's medical record, Ms. Keller explained the incidents alleged in each charge. Regarding Charge I, a patient on September 22, 2016, did not receive Metronidazole before the medical abortion.¹⁰ Instead, the patient had to pick up the antibiotic and be instructed to take it before taking

¹⁰ Staff Exhibit 6 at 37-40; *see also* Staff Exhibit 5 at 32-38.

the medication for the second part of the procedure. By failing to administer Metronidazole, Ms. Keller asserted Respondent failed to follow her duty to administer medication that is safe to the patient as ordered.

Regarding Charge II, Ms. Keller explained Respondent gave a patient MicRhoGAM on October 5, 2016.¹¹ However, Ms. Keller indicated the appropriate dose was RhoGAM, based on the gestational age of the pregnancy. The next day, on October 6, 2016, Respondent administered the proper dose of RhoGAM based on a 20-week 1-day gestational age,¹² but, as noted by Ms. Keller, the patient should have been given RhoGAM on both days.

Regarding Charge III, Ms. Keller testified Respondent gave RhoGAM to a patient who did not need the medication—an Rh-positive woman.¹³

Charge IV relates to another alleged RhoGAM error. Respondent gave a patient whose pregnancy was at a gestational age of 13 weeks 6 days MicRhoGAM instead of RhoGAM.¹⁴ Here, according to Ms. Keller, the patient was told to return to the clinic, but despite efforts to accommodate and assist the patient in returning to the clinic, the patient did not return.

Ms. Keller acknowledges MicRhoGAM and RhoGAM look and sound alike but insists a “look alike/sound alike” problem or having both medications in the same refrigerator does not absolve a nurse of her responsibility. First, the selection of MicRhoGAM or RhoGAM is based on gestational age. Second, a nurse can pull the drug and read the label. Third, after the nurse gets the medication out of the refrigerator, she fills out the medication review details by selecting MicRhoGAM or RhoGAM, entering the lot number, and entering the time she gave the medication to the patient. Finally, Ms. Keller describes measures taken to prevent the errors made by Respondent, which included locating the drugs on different shelves in the refrigerator and having a large sign reminding personnel to retrieve the correct medication. Respondent’s actions,

¹¹ Staff Exhibit 5 at 70.

¹² Staff Exhibit 5 at 76.

¹³ Staff Exhibit 5 at 127-138; Staff Exhibit 6 at 33-36.

¹⁴ Staff Exhibit 5 at 141-155; Staff Exhibit 6 at 13-16.

according to Ms. Keller, violated the principles of right drug and right dose medication administration, which is taught in nursing school, and was a matter of Respondent choosing the wrong medication as opposed to merely picking up the wrong medication.

In Charge V, Ms. Keller testified that Respondent failed to document the patient had vomited. Instead, Ms. Keller wrote an addendum to the patient's medical records noting that the patient had an emesis episode after the patient had taken Misoprostol and Metronidazole.¹⁵ To be effective, Metronidazole needs to be in a patient's system for approximately 1 hour, and Misoprostol for 30 minutes.¹⁶ However, sufficient time had passed between administration of the medications and the episode of emesis, so there was no need to re-medicate.¹⁷ In this situation, Ms. Keller indicated it was particularly important to document the emesis episode to determine whether the patient received the right or enough medication to start the medical abortion process because the purpose of the Metronidazole was to prevent the patient from getting an infection during the procedure.

2. Respondent's Testimony

Respondent did not recall the sequence of events that transpired for Charge I due to the length of time that had passed since the incident. She, however, insisted she took responsibility for the errors she reported. Respondent admitted the four medication errors—Charges I, II, III, and IV—happened. She acknowledged writing the Medical Incident Reports, which captured those errors, and stood behind those reports. Nonetheless, Respondent also testified the work environment and other mitigating factors contributed to her errors.

Respondent claimed it was a challenge working for Planned Parenthood because errors were endemic, many employees were young and inexperienced, and staffing shortages were persistent. Respondent described a culture of intimidation, including working with a doctor who bullied the nurses. Respondent also asserted that, as charge nurse, Ms. Keller created a chaotic

¹⁵ Staff Exhibit 5 at 193; *see* Staff Exhibit 6 at 45-48.

¹⁶ Staff Exhibit 5 at 193.

¹⁷ Staff Exhibit 5 at 193.

work environment by changing the procedures that ordinarily ensured things ran smoothly. For example, Ms. Keller directed nurses to see patients more quickly instead of staying with the same patient throughout the patient's visit. Those changes worried Respondent, as they did not feel safe to her. Having come from a culture of safety, Respondent stated she wanted to make things right and was being as careful as she could be, but the errors still happened because of the work environment. In addition to filling out the Medical Incident Reports and providing corrective action plans to prevent future incidents, she reported the doctor to human resources and reported an efficiency action to the pharmacist, specifically, she reported how nurses were instructed to draw their own saline flushes from saline bags not labeled as multi-dose.

Respondent disagrees that MicRhoGAM and RhoGAM can easily be distinguished. She said the packaging for both is "identical," consisting of a pink plastic overlay, and the lot numbers are written in very fine print and are difficult to distinguish. Unlike "high alert" medications, which have markings to make the differences more obvious, Respondent argued that MicRhoGAM and RhoGAM appear "exactly the same."

Respondent and Ms. Keller both mentioned that RhoGAM and MicRhoGAM are not harmful to the patient, and Respondent agreed that the harm would be in the woman's second pregnancy, if she developed Rh-positive antibodies and her next pregnancy was with an Rh-positive fetus. Even then, Respondent opined there is a "remote chance"—a 30% probability—of harm, because 30% of men are Rh-positive, and that does not mean the fetus will be Rh-positive.

Regarding Charge III (giving RhoGAM to an Rh-positive patient) Respondent felt there were adequate safeguards in place. However, she blamed the error on the work environment, stating that she was "rushed off [her] feet," stressed, bullied, had too many patients waiting and too few staff on duty, and did not often have a chance to eat and thus had low blood sugar.

Finally, regarding Charge V, Respondent stated that "everyone throws up" and that it is not her practice to document emesis. As explained by Respondent, pregnant women already have a level of nausea and the biggest side effect of the drugs they are given for a medication abortion is nausea. Thus, Respondent stated that documenting emesis "is not routine by any stretch of the

imagination,” and Respondent would document it only if the nausea was unceasing or the patient’s nausea did not resolve.

3. Ms. Bliss’s Testimony

Ms. Bliss admitted she did not see or recall the incidents relating to Charges I, II, III, and IV. Although she did not know the specifics of Charge V, her testimony supported Respondent’s claim that the nurses saw many episodes of emesis with the patient population at Planned Parenthood. Although they did not document emesis because of their fast-paced work environment, Ms. Bliss acknowledged that the doctor needed to know about emesis. Ms. Bliss also described the work environment as toxic, as a place of bullying, and as a place not conducive to working in a safe manner.

4. Ms. Laws’s Testimony

Ms. Laws has been a licensed RN since 1977 and has been a nursing practice consultant for the Board for over eight years. She testified as an expert on the Board’s laws and rules. Having reviewed the medical records in evidence, Ms. Laws offered opinions on the alleged violations and appropriate sanctions as well as testified that the patient population at Planned Parenthood is an extremely vulnerable one due to the decision the women have to make.

Ms. Laws listed the seven “rights” of medication administration that nurses learn in nursing school and must follow every time a nurse administers medication: right patient, right drug, right dose, right time, right route, right reason, and right documentation. She also explained that documentation is important and a major responsibility for a nurse, because it is generally the nurse’s duty to document, and the medical record is the medium of communication amongst a patient’s care team.

According to Ms. Laws, the minimum standards implicated in Charges I, II, III, and IV are contained in Board Rules § 217.11(1)(A), (1)(B), and (1)(C).

For Charge I, Ms. Laws explained that by not giving the prophylactic antibiotic Metronidazole as ordered by the physician, Respondent created a risk of infection, specifically post-abortion infection.

For Charges II and IV, Respondent gave the wrong dose and wrong drug. The nursing standards, especially Board Rule § 217.11(1)(C), require nurses to know the rationale for and the effects of medications and treatments and to correctly administer the same. She explained that look alike/sound like drugs do not absolve a nurse from this standard; rather, it increases a nurse's responsibility by taking an extra step of precaution to ensure he or she is giving the right drug and is following the seven rights of medication administration. Ms. Laws opined it is the responsibility of the nurse administering the drug to ensure the correct drug is administered, which can be done in a variety of ways: double-checking everything herself, having another nurse check it is the right drug, and looking at the name of the drug on the box. It is the nurse's responsibility to read the box before giving the medication. As for Charge III, Respondent gave the drug to the wrong patient, because, according to Ms. Laws, there is no reason to give an Rh-positive patient RhoGAM or MicRhoGAM.

Regarding the failure to document in Charge V, Ms. Laws said the minimum standards implicated are contained in Board Rules 217.11(1)(A), (1)(B), and (1)(D). Specifically, the client's status, including signs and symptoms such as vomiting, and the client's response to the medication should be documented. Ms. Laws said Respondent's inaction was a problem because the patient's response to the medication (vomiting) was not documented, and the emesis meant the patient may not have received the therapeutic effects of the medication. Finally, documenting emesis allows other care providers to know what is going on with that patient. Ms. Laws insisted all nurses document emesis; it is a standard of practice. She said she was unaware of any circumstance where vomiting is not documented.

To the extent Ms. Laws' testimony regarding the appropriate sanction was accepted by the ALJ, it is generally incorporated into the analysis below without citation.

B. Analysis**1. Conduct Established**

The ALJ finds that Staff proved all five formal charges by a preponderance of the evidence. Respondent admitted to the first four charges and admitted she only documented emesis where nausea is not resolved. Respondent also declared, and Ms. Bliss concurred, that documenting emesis was not routine at Planned Parenthood. Although Respondent argued the work environment at Planned Parenthood contributed to her errors and testified about her attempts to resolve the issues, the ALJ finds the weight of that evidence is appropriately applied towards mitigating factors, not towards excusing her actions.

The ALJ finds that Staff proved conduct supporting disciplinary action under Code § 301.452(b)(13) and Board Rule § 217.11(1)(A), (1)(B), (1)(C), and (1)(D). Staff also proved unprofessional conduct under Code § 301.452(b)(10) and Board Rule 217.12(1)(A), (1)(B), and (4). The ALJ must now determine the appropriate sanction for the conduct proven.

2. Sanction Analysis

The ALJ finds the sanction analysis under either Code § 301.452(b)(10) or (b)(13) would arrive at the same conclusion. However, the ALJ finds this case is better defined as a failure to meet minimum standards of practice (subsection (b)(13)) because the unprofessional conduct provisions charged in this case are more general in scope.

For sanctions pursuant to Code § 301.452(b)(13), the second tier of the Disciplinary Matrix is the level designated for conduct that falls below nursing standards and that results in patient harm or a risk of harm.¹⁸ The first tier is for conduct with a low risk of harm, which could apply if Charge III (giving RhoGAM to an Rh-positive patient) was the only charge; both Ms. Keller and Respondent testified that RhoGAM is not harmful. However, Respondent's conduct in failing to

¹⁸ 22 Tex. Admin. Code § 213.33(b).

ensure the patient in Charge I took Metronidazole at the right time created a risk of post-abortion infection. Respondent's medication errors for the patients at issue in Charges II and IV caused the patients to receive a lower dose (MicRhoGAM) than appropriate for the gestational ages of their pregnancies. That also created a risk of patient harm; the ALJ disagrees with Respondent's unproven assertion that having an Rh-positive fetus in a second pregnancy is a "remote" risk. Staff did not prove that the conduct resulted in a serious risk of harm or death, which is required for third tier sanction.

Within the second tier for a failure to conform to minimum standards of practice, the Board must select Sanction Level I or II, based upon the aggravating and mitigating factors in the Disciplinary Matrix and those listed in Board Rule 213.33(c). As aggravating factors here, there were multiple violations and although there was no patient harm proven, the evidence showed there was a risk of patient harm from Respondent's actions. Patient vulnerability is another aggravating factor; the patient population at Planned Parenthood is extremely vulnerable due to the kind of decision the patient is making.

The evidence demonstrated several mitigating factors. Respondent argued, and Ms. Laws agreed, that systemic issues at Planned Parent contributed to Respondent's violations, because the volume of patients, the relative inexperience of the staff, and persistent staff shortages made it easier for mistakes to happen. However, Ms. Laws cautioned that regardless of the environment, nurses still have a duty—an individual responsibility—to their patients. Also, Ms. Laws acknowledged that Respondent was a novice nurse and therefore inexperienced. Respondent provided letters of recommendation from colleagues and friends, attesting to her good character, dedication, and work ethic. Finally, Respondent has no disciplinary history beyond the allegations in this case.

The second tier, Sanction Level I for Code § 301.452(b)(13) can result in a warning with stipulations or reprimand with stipulations. The ALJ finds, based on the aggravating and mitigating factors, a one-year warning with stipulations is more appropriate than a reprimand, particularly because there was no demonstrated patient harm, despite a risk of harm. The ALJ agrees with Ms. Laws's recommendations that Respondent be required to complete remedial education classes in

(1) nursing jurisprudence and ethics; (2) documentation; (3) critical thinking; (4) professional accountability; and (5) medication administration. Other stipulations for the one-year order may include, at the Board's discretion, requirements that Respondent (1) ensure she has indirect supervision (specifically, a supervisor available on the premises, not necessarily on the unit); (2) notify her employer(s) of the Board order; (3) notify the Board of her employment and any employment change; and (4) provide the Board with quarterly evaluation forms completed by her employer(s).

In support of the recommended sanction of a One-Year Warning with Stipulations, the ALJ makes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. Maria Eugenia Flores Dalton (Respondent) was issued Registered Nurse (RN) License No. 876115 by the Texas Board of Nursing (Board) in 2015.
2. Planned Parenthood of Greater Texas, Austin, Texas (Planned Parenthood) employed Respondent as a RN from June 6, 2016, through February 28, 2017.
3. A medication abortion involves a two-step process beginning with administration of Mifepristone (Mifeprex), followed by Misoprostol. During Respondent's employment, Planned Parenthood had a standing order requiring all patients undergoing medication abortion to be treated with antibiotics before the first drug for the medication abortion is given. Metronidazole is the prophylactic antibiotic usually chosen and given to the patient one hour before the procedure.
4. On September 22, 2016, Patient No. 333256 had an ultrasound to confirm pregnancy and chose to have a medical abortion the same day. Respondent failed to administer Metronidazole to Patient No. 333256 while the patient was in the clinic and prior to the first stage of the medical abortion. Instead, Patient No. 333256 had to pick up the antibiotic and be instructed to take it before taking Misoprostol, the medication for the second part of the procedure.
5. MicRhoGAM and RhoGAM are medications that prevent mothers with Rh-negative blood type from making Rh-positive antibodies. The decision as to whether MicRhoGAM or RhoGAM is given is dependent on having a Rh-negative patient and the gestational age of the pregnancy. Failure to give the proper medication can potentially affect the mother's next pregnancy, which can end in miscarriage or a fetal anomaly if she develops Rh-positive antibodies and her fetus is Rh-positive.

6. MicRhoGAM and RhoGAM differ in dosage. Per Planned Parenthood's standing orders, MicRhoGAM is given for a gestational age up to 12 weeks and 6 days. RhoGAM, which is a higher dose of medication, is given for a gestational age of 13 weeks or beyond.
7. MicRhoGAM and RhoGAM are "look alike/sound like" medications that were kept in the same refrigerator at Planned Parenthood but on different shelves. The drugs were identified on the labels, and the refrigerator had a large sign reminding personnel to retrieve the correct medication.
8. On October 5, 2016, Patient No. 43884's pregnancy was at a gestational age of 20 weeks. Respondent administered MicRhoGAM to Patient No. 43884 instead of RhoGAM. Patient No. 43884 returned to the clinic on October 6, 2016, for the second day of the medication abortion procedure. On that day, Respondent properly administered RhoGAM.
9. On October 21, 2016, Respondent administered MicRhoGAM to Rh-positive Patient No. 440384. MicRhoGAM is for patients who have Rh-negative blood type.
10. On December 21, 2016, Patient No. 347701's pregnancy was at a gestational age of 13 weeks and 6 days. Respondent gave the patient MicRhoGAM instead of RhoGAM. The patient was told to return to the clinic, but despite efforts to accommodate and assist the patient in returning to the clinic, the patient did not return.
11. To be effective, Metronidazole needs to be in a patient's system for approximately 1 hour and Misoprostol for 30 minutes. If the patient has emesis (vomiting), a drug may not be fully effective.
12. On February 23, 2021, Respondent administered Metronidazole and Misoprostol to Patient No. 454073, who had an episode of emesis after taking the medication. Respondent failed to document the emesis in the patient's medical record. Because sufficient time had passed between administration of the medications and the vomiting, Patient No. 454073 did not need a re-dosing of the medications.
13. The Staff of the Board (Staff) opened an investigation into Respondent's conduct. On October 22, 2020, Staff sent Respondent a Notice of Hearing and Formal Charges that notified Respondent of a December 14, 2020 hearing on the merits before an Administrative Law Judge (ALJ) of the State Office of Administrative Hearings (SOAH).
14. On December 3, 2020, in Order 2, the ALJ continued the hearing.
15. On May 19, 2021, Staff sent Respondent a 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.

16. ALJ Meaghan Bailey convened the hearing by videoconference on August 26, 2021. Assistant General Counsel John Vanderford represented Staff, and attorneys Elizabeth Higginbotham and Thomas Padgett, Jr., represented Respondent. The hearing concluded and the record closed that day.
17. On September 7, 2021, this case was reassigned to ALJ Dee Marlo Chico, who reviewed the evidence, including the recording of the hearing, and prepared this Proposal for Decision (PFD) pursuant to 1 Texas Administrative Code § 155.151.

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 PFD 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, and Respondent had the burden of establishing any mitigating factors. 1 Tex. Admin. Code § 155.427.
5. Respondent is subject to sanction because she practiced below minimum standards of nursing care in 22 Texas Administrative Code § 217.11(1)(A), (1)(B), (1)(C), and (1)(D) by conduct described in the Findings of Fact, including:
 - a. failing to know and conform to the Texas Nursing Practice Act and the Board's rules and regulations as well as all federal, state, or local laws, rules or regulations affecting the nurse's current area of nursing practice;
 - b. failing to implement measures to promote a safe environment for clients and others;
 - c. failing to know the rationale for and the effects of medications and treatments and correctly administer the same; and
 - d. failing to accurately and completely report and document required matters, including client status, care rendered, doctors' orders, medications and treatments administered, client response, and contacts with other members of the health care team.

This conduct is subject to sanction. Tex. Occ. Code § 301.452(b)(10), (b)(13) (2019).

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 Texas Administrative Code § 213.33(b).
8. The Board may consider as aggravating factors the number of violations; evidence of actual or potential harm to patients; and patient vulnerability. 22 Tex. Admin. Code § 213.33(b)-(c).
9. The Board may consider as mitigating factors the lack of evidence of serious harm to patients; length of time that has passed since the incident; positive comments provided by patients regarding Respondent's practice; length of time Respondent has practiced; the extent to which system dynamics in the practice system contributed to the problem; and Respondent's subsequent practice without any known complaints. 22 Tex. Admin. Code § 213.33(b)-(c).

VI. RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the ALJ recommends that the Board issue a One-Year Warning with Stipulations including:

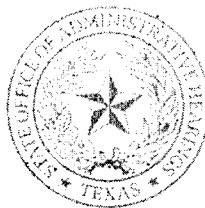
Completing classes in nursing jurisprudence and ethics, documentation, critical thinking, professional accountability, and medication administration; working with indirect supervision, specifically with a supervisor on the premises, not necessarily on the unit; providing her employer a copy of the Board's order; having her employer provide the Board quarterly evaluation forms; notifying the Board of her employment and any employment change, and such other provisions as the Board deems appropriate.

SIGNED October 22, 2021.



DEE MARLO CHICO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

FILED
507-20-4429
11/12/2021 11:52 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK



ACCEPTED
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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 12, 2021

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. 507-20-4429; Texas Board of Nursing v.
Maria Eugenia Flores Dalton**

Dear Ms. Thomas:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced case has expired and neither party filed exceptions. *See* 1 Tex. Admin. Code § 155.507(b). Therefore, the Administrative Law Judge recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being remanded to the Texas Board of Nursing. *See* Tex. Gov't Code § 2003.051(a).

Sincerely,

A handwritten signature in black ink, appearing to read "DMChico", is written over a faint, illegible typed name.

Dee Marlo Chico
Administrative Law Judge

DMC/tl

xc: John Vanderford, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701
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