



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. Johnson
Executive Director of the Board

DOCKET NUMBER 507-21-3244

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
PERMANENT CERTIFICATE
NUMBER 308689, § **OF**
ISSUED TO
JANNETTE DENNEIDA CERDA § **ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

TO: JANNETTE DENNEIDA CERDA
c/o JOHN RIVAS, ATTORNEY
3345 BEE CAVES RD., STE 104
AUSTIN, TX 78746

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 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 308689, previously issued to JANNETTE DENNEIDA CERDA, 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.

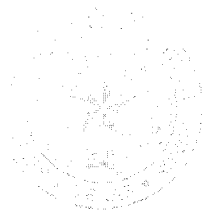
Entered this 20th day of January, 2022.

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. 507-21-3244 (November 4, 2021)



FILED
507-21-3244
11/4/2021 2:50 PM
STATE OFFICE OF
ADMINISTRATIVE HEARING
Carol Hale, CLERK

ACCEPTED
507-21-3244
11/4/2021 3:31:37 pm
STATE OFFICE OF
ADMINISTRATIVE HEARING
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 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. 507-21-3244; Texas Board of Nursing
v. Jannette Denneida Cerda**

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,

Handwritten signature of Dee Mario Chico.

Dee Mario Chico
Administrative Law Judge

DMC/tl

xc: Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA EFILE TEXAS**
John Rivas, Attorney for Respondent, 3345 Bee Caves Rd., Suite 104, Austin, TX 78746 – **VIA EFILE TEXAS**

TEXAS BOARD OF NURSING, Petitioner	§	BEFORE THE STATE OFFICE
	§	
v.	§	
	§	OF
JANNETTE DENNEIDA CERDA, Respondent	§	
	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION
BY SUMMARY DISPOSITION**

The staff (Staff) of the Texas Board of Nursing (Board) seeks to revoke the vocational nursing license (LVN) of Jannette Denneida Cerda (Respondent) because she pleaded guilty to a charge of second-degree felony offense of Aggravated Assault with a Deadly Weapon under Texas Penal Code § 22.02. Staff filed a Motion for Summary Disposition requesting a Proposal for Decision in its favor as a matter of law. Respondent disagreed in her response. After considering the pleadings, the summary disposition evidence, and the applicable law, the Administrative Law Judge (ALJ) concludes that the Motion for Summary Disposition 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.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On August 13, 2021, the Board referred this case to the State Office of Administrative Hearings (SOAH). On August 18, 2021, Staff filed and served its Motion for Summary Disposition and supporting evidence. Respondent timely filed a Response to Staff’s Motion for Summary Disposition on September 1, 2021, with supporting evidence. Staff filed a reply on September 3, 2021. On September 9, 2021, Respondent filed a sur-reply. The hearing set for October 16, 2021, was continued until further ordered.¹

¹ Order No. 3, issued September 20, 2021 (continuing the hearing scheduled for October 6, 2021 to provide the ALJ additional time to review the pleadings and prepare a ruling on the motion for summary disposition).

Staff established jurisdiction and proper notice to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law without further discussion.

II. SUMMARY DISPOSITION EVIDENCE

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

- The Board issued LVN license number 308689 to Respondent on August 16, 2012.²
- On September 24, 2020, in the 332nd District Court, Hidalgo County, Texas, in *The State of Texas v. Jannette Denneida Cerda*, under Case Number CR-0772-20-F, Respondent pleaded guilty to Aggravated Assault with a Deadly Weapon, a second-degree felony offense under Section 22.02 of the Texas Penal Code. The offense was committed on October 13, 2019.³
- Respondent entered into a Pre-Trial Diversion Agreement with the Court on September 29, 2020 for a minimum of two years.⁴
- On August 12, 2021, the 332nd District Court, Hidalgo County, Texas entered a judgement dismissing Respondent's criminal case.⁵

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.⁶

² Staff Ex. A.

³ Staff Ex. B.

⁴ Staff Ex. B.

⁵ Respondent Ex. A.

⁶ 1 Tex. Admin. Code § 155.505(a).

In seeking disciplinary action against Respondent, Staff relies on Texas Occupations Code (Code) § 301.4535(a)(6) and (b),⁷ which requires the Board to revoke a nurse's license if a nurse enters a plea of guilty to Aggravated Assault with a Deadly Weapon under Texas Penal Code § 22.02.

IV. ARGUMENTS, ANALYSIS, AND RECOMMENDATION

In its motion, Staff argues Code § 301.4535(a)(6) and (b) require the Board to revoke a nurse's license if a nurse enters a plea of guilty to Aggravated Assault with a Deadly Weapon under Texas Penal Code § 22.02. Respondent opposes the motion and argues that (1) a guilty plea is voided by a criminal case dismissal,⁸ (2) Code § 301.452 is the proper provision applicable in this case, (3) consideration of mitigating factors is available under either Code §§ 301.452 or 301.4535, and (4) applying mitigating factors show multiple unresolved questions of fact requiring a hearing on the merits.

Respondent disputed Staff's claim that revocation is automatically triggered on a guilty plea alone without consideration of the ultimate case disposition. Here, Respondent's pre-trial diversion agreement granted her the possibility of deferred adjudication on completion of community supervision, which Respondent completed, and resulted in dismissal of her criminal case on August 12, 2021. With her criminal case dismissed, Respondent argues her guilty plea cannot serve as the sole basis for her revocation as she is not classified as a felon and was not convicted.

⁷ Tex. Occ. Code § 301.4535 was last amended on September 1, 2021. The amendment is neither relevant nor applicable in this case. *See* H.B. 375, 87 Leg. R.S. (2021).

⁸ Respondent also argued that the Texas Legislature amended the deferred adjudication sections of the Code of Criminal Procedures effective September 1, 2021 to prohibit denial of professional or occupational licenses and certificates upon successful completion of deferred adjudication. However, the applicability of this new law and the legislature's intent will not be addressed as the new law applies only to defendants placed on deferred adjudication for offenses committed on or after September 1, 2021. *See* H.B. 757, 87 Leg., R.S. (2021). Respondent's offense occurred before that date.

Respondent also asserts that ambiguities exist in the Texas Occupations Code as to which of two statutory provisions apply in this case. According to Respondent, the ambiguities trigger both Code §§ 301.4535(b) and 301.452(b)(3). Respondent advances Code § 301.452(b)(3) as the relevant provision as well as the need to consider mitigating factors regardless of whether Code §§ 301.4535 or 301.452 apply.

Staff maintains Code § 301.4535(b) is a mandatory provision invoked by Respondent's guilty plea regardless of the final disposition of Respondent's offense based on the following: (1) a plea of *nolo contendere* or guilty is required before a deferred adjudication can even be considered in Texas, and (2) the legislature, when it first enacted Code § 301.4535, intended to apply it to a person placed on deferred adjudication or deferred disposition after a plea of guilty or *nolo contendere*.⁹ Thus, Staff posits that use of the phrase "a plea of guilty or *nolo contendere*" would have no meaning or use in the statute if deferred dispositions were meant to be excluded from Code § 301.4535. Respondent counters that the current language of Code § 301.4535(b) is materially different from the initial 2005 version: the original statute was effective on the failure to disclose and not on the guilty plea itself.

The ALJ disagrees with Respondent's reading that ambiguities exist in the statutory provisions. A review of the legislative history of Code § 301.4535 shows the legislature merely removed a condition—a disclosure provision—that would prohibit the Board from issuing, renewing, or revoking a license on final conviction or a plea of guilty. The legislature kept the language that a final conviction or a plea of guilty permits the Board to revoke a license or refuse issuance or renewal of a license.¹⁰ Looking at the language of Code § 301.4535(b) and comparing it to the legislature's purpose when the legislature created it in 2005 and when the legislature amended it in 2009, there is no evidence to support Respondent's argument that the legislature intended to exclude consideration of a deferred adjudication or deferred disposition as a basis for license denial.¹¹ The legislature could have easily excluded all reference to deferred adjudication

⁹ Tex. H.B. 1366, 79th Leg., R.S. (2005).

¹⁰ Tex. H.B. 3961, 81st Leg., R.S. (2009).

¹¹ See Tex. H.B. 1366, 79th Leg., R.S. (2005); Tex. H.B. 3961, 81st Leg., R.S. (2009).

or deferred disposition in Code § 301.4535 if it intended for them to have no effect on a nurse's license. Instead, Code § 301.4535, requires revocation for deferrals but permits, under Code § 301.4535(c), reinstatement after five years from when a person successfully completed and was dismissed from deferred adjudication or deferred disposition.

In support of its position that the language of Code § 301.4535 is clear and specific, Staff includes prior SOAH cases addressing the mandatory provisions of § 301.4535(b).¹² While not binding, they are persuasive and provide guidance. Furthermore, Code § 301.4535(b) does not require final conviction alone as Respondent contends; rather, it requires final conviction *or* a plea of guilty or nolo contendere. Moreover, under the Code Construction Act,¹³ the more specific statutory provisions generally prevail over general provisions.¹⁴ An exception is when the general provision is the later enactment and the legislature's "manifest intent" is that the general provision prevails.¹⁵ Neither is the case here. Not only is Code § 301.4535 the later-enacted provision, but, as explained earlier, while Code § 301.4535(b) requires revocation for deferred adjudication or deferred disposition, a person later becomes eligible for licensure after the fifth anniversary of the successful completion of the deferral.¹⁶ Thus, the more specific statutory provisions of Code § 301.4535 controls over the more general provisions of Code § 301.452.

Because the denial of Petitioner's license is mandatory pursuant to Code § 301.4535(b), it is not necessary to consider any mitigating factors. Accordingly, no evidentiary hearing is necessary to consider the circumstances of the offense or aggravating and mitigating factors relative to sanctions.

¹² *E.g.*, *Tex. Bd. of Nursing v. Derek K. Quillian*, SOAH Docket No. 507-18-4086 (December 5, 2018) (finding respondent's license is subject to mandatory revocation pursuant to Code § 301.4535(b) despite evidence respondent pleaded guilty on advice of his attorney and had no disciplinary problems); *Tex. Bd. of Nursing v. Erin Jones, RN*, SOAH Docket No. 507-19-1152 (December 19, 2018) (stating the Board is mandated by its own statute to revoke respondent's license for pleading guilty to aggravated assault with a deadly weapon (family violence)); *Tex. Bd. of Nursing v. Rene Ian Dominguez, RN*, SOAH Docket No. 507-19-3208 (March 27, 2019) (finding Board is mandated by Code § 301.4535 to revoke the license of respondent who pleaded guilty to aggravated assault with a deadly weapon).

¹³ Tex. Gov't Code ch. 311.

¹⁴ Tex. Gov't Code § 311.026.

¹⁵ *State v. Schunior*, 467 S.W.3d 79, 83 (Tex. App.—San Antonio 2015), *aff'd*, 506 S.W.3d 29 (Tex. Crim. App. 2016).

¹⁶ Tex. Occ. Code § 301.4535(c).

The uncontroverted summary disposition evidence shows that Respondent pleaded guilty to Aggravated Assault with a Deadly Weapon.¹⁷ Aggravated Assault with a Deadly Weapon is an offense under Texas Penal Code § 22.02. As a matter of law, Respondent's license is subject to mandatory revocation under Texas Occupations Code § 301.4535(a)(6) and (b). For these reasons, Staff's Motion for Summary Disposition is **GRANTED**, and the ALJ recommends that the Board revoke Respondent's LVN license.

V. FINDINGS OF FACT

1. Jannette Denneida Cerda (Respondent) is licensed by the Texas Board of Nursing (Board) as a vocational nurse (LVN).
2. Respondent holds a permanent license number 308689 issued by the Board on August 16, 2012.
3. On September 24, 2020, the 332nd District Court, Hidalgo County, Texas in *The State of Texas v. Jannette Denneida Cerda*, under Case Number CR-0772-20-F, Respondent pleaded guilty to Aggravated Assault with a Deadly Weapon, a second-degree felony offense under Section 22.02 of the Texas Penal Code. The offense was committed on October 13, 2019.
4. As evidenced by certified court records, Respondent entered into a Pre-Trial Diversion Agreement with the Court on September 29, 2020 for a minimum of two years.
5. On August 12, 2021, the 332nd District Court, Hidalgo County, Texas entered a judgement dismissing Respondent's criminal case.
6. On August 13, 2021, the Board's staff (Staff) referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
7. On August 17, 2021, Staff filed with SOAH and served on Respondent its Notice of Hearing by sending it to Respondent's last known address on record by certified or registered mail, return receipt requested. The Notice of Hearing contained Formal Charges against Respondent. The Formal Charges were previously served on Respondent on July 1, 2021 and filed with SOAH on August 13, 2021. The Notice of Hearing along with the Formal Charges contained a statement of the legal authority and jurisdiction under which discipline is sought against Respondent; 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.

¹⁷ Staff Ex. B.

8. On August 18, 2021, Staff filed and served its Motion for Summary Disposition and supporting evidence by certified mail.
9. Respondent timely filed a Response to Staff's Motion for Summary Disposition on September 1, 2021 with supporting evidence.
10. On September 2, 2021, Respondent filed an answer to the Formal Charges.
11. Staff filed a Reply to the response to Staff's Motion for Summary Disposition on September 3, 2021, and Respondent filed a sur-reply on September 9, 2021.

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 proposed findings of fact and conclusions of law or a proposal for decision on summary dispositions. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 301.454; 1 Tex. Admin. Code § 155.505.
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. Aggravated Assault with a Deadly Weapon is a second-degree felony offense under Texas Penal Code § 22.02.
6. Respondent's LVN license is subject to mandatory revocation. Tex. Occ. Code § 301.4535(a)(6), (b).

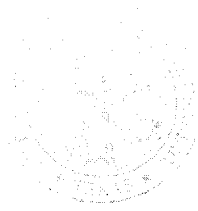
VII. RECOMMENDATION

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

SIGNED November 4, 2021.


DEE MARIE CHICHO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

FILED
507-21-3244
12/1/2021 3:05 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK



ACCEPTED
507-21-3244
12/1/2021 3:35:43 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 1, 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. 507-21-3244; Texas Board of Nursing
v. Jannette Denneida Cerda**

Dear Ms. Thomas:

I issued a Proposal for Decision (PFD) in this case on November 4, 2021. Please be advised that the time period to file exceptions to the PFD has expired and neither party filed exceptions. Therefore, the PFD is ready for your review, and I recommend it be adopted as written.

Sincerely,

Handwritten signature of Dee Marlo Chico in black ink.

Dee Marlo Chico
Administrative Law Judge

DMC/tl

xc: Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA EFILE TEXAS**
John Rivas, Attorney for Respondent, 3345 Bee Caves Rd., Suite 104, Austin, TX 78746 – **VIA EFILE TEXAS**