DOCKET NUMBER 507-21-2333

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
SANDRA BRENNET PATTERSON,	§	
PETITIONER FOR ELIGIBILITY	§	
FOR RELICENSURE	§	OF ADMINISTRATIVE HEARINGS

OPINION AND ORDER OF THE BOARD

TO: SANDRA BRENNET PATTERSON
2001 MING DRIVE
FT. WORTH, TX 76134

KENESHIA WASHINGTON
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, and on December 3, 2021, the ALJ issued a letter remanding the matter to the Board for resolution.

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, and the Board agrees, that the Petitioner failed to meet her burden of proof of proving her present fitness to practice nursing and that she has good professional character[1]. The ALJ recommends that the Board sustain its denial of Petitioner's Petition for Licensure Reinstatement and that the Petitioner undergo at least six months of therapy and a follow up psychological evaluation prior to consideration by the Board for future reinstatement of her license[2]. The Board agrees.

The conduct which led to the surrender of the Petitioner's license was the financial exploitation of a patient[3]. The Petitioner accessed the patient's bank account on approximately fifteen different occasions during a period of about ten months while providing home health care to the patient[4]. It is therefore questionable whether Petitioner can practice nursing in an autonomous role[5]. Further, the Petitioner's development of a friendship with the patient raises additional concerns regarding the Petitioner's ability to recognize and honor interpersonal boundaries appropriate to a health care setting[6]. The Petitioner's actions demonstrate a profound lack of insight into her own behavior and its negative effect on the patient, as well as her inability to meet the minimum standards of nursing practice[7]. It is also significant that Petitioner did not self-disclose her behavior until her employer began an investigation[8]. The results of the Petitioner's psychological evaluation, including the evaluator's conclusion that the Petitioner would not likely be able to consistently avoid behaviors constituting unprofessional conduct, as well as the Petitioner's failure to undergo at least six months of comprehensive counseling pursuant to the evaluator's recommendation, further supports denial of licensure reinstatement at this time[9].

The Board, after considering the factors identified by the ALJ in this case, as well as those set forth in Board rules 213.26(e), 213.27(c), and 213.29(b), agrees with the ALJ that the Petitioner's Petition for Licensure Reinstatement should be denied.

IT IS, THEREFORE, ORDERED THAT the Petition for Licensure Reinstatement filed by SANDRA BRENNET PATTERSON, is hereby, DENIED.

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

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[1] See adopted Conclusions of Law Numbers 26-27.
[2] See adopted Conclusions of Law Numbers 28-29..
[3] See adopted Findings of Fact Numbers 11-13 and pages 12-15 of the PFD.
[4] See id.
[5] See page 13 of the PFD.
[6] See Id.
[7] See Id
[8] See Id
[9] See adopted Findings of Fact Numbers 18-19 and page 14 of the PFD.

IT IS FURTHER ORDERED that PETITIONER shall not be eligible to petition for reinstatement of licensure until PETITIONER completes:

(1) At least six months of comprehensive therapy, as recommended by the evaluator performing the PETITIONER's October 15, 2020, evaluation; and

(2) Completes a subsequent mental health/psychological evaluation that meets the requirements specified by the Board in its adopted Guidelines for Physical and Psychological Evaluations, which may be found at the following web address: http://www.bon.texas.gov/pdfs/eval-guidelines.pdf.   As part of this evaluation, PETITIONER shall notify the performing evaluator of this Order of the Board prior to completing the evaluation; cause the performing evaluator to send a report of the evaluation to the Board's office; and comply with any recommendations made by the evaluator for therapy or other follow-up.

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

Katherine A. Thomas

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

Attachment: Proposal for Decision; 507-21-2333 (November 8, 2021)

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 8, 2021

Joanna Starr for Katherine A. Thomas, M.N., R.N.   **VIA EFILE TEXAS**
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, TX 78701

   **RE: Docket No. 507-21-2333; Sandra Brennet Patterson v.
          Texas Board of Nursing**

Dear Ms. Starr:

   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,

Keneshia Washington
Administrative Law Judge

KW/nm

xc: Joanna Starr, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 – **VIA EFILE TEXAS**
      Sandra Brennet Patterson, 2001 Ming Drive, Fort Worth, TX 76134– **VIA EFILE TEXAS**

SANDRA BRENNET PATTERSON, Petitioner	§ § §	BEFORE THE STATE OFFICE
v.	§ §	OF
TEXAS BOARD OF NURSING, Respondent	§ § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Sandra Brennet Patterson (Petitioner) submitted a Petition for Licensure Reinstatement (Petition) seeking a reinstatement of her Licensed Vocational Nurse (LVN) credential. The staff (Staff) of the Texas Board of Nursing (Board) denied the Petition based on the results of a psychological evaluation of Petitioner and Petitioner's history of financial exploitation of a patient. Petitioner timely requested a hearing. The Administrative Law Judge (ALJ) concludes that Petitioner has not established by a preponderance of the evidence that she is presently fit to practice, has good professional character, or has met the minimum requirements for reinstatement of her LVN credential. Therefore, the ALJ recommends that Staff's denial of the Petition be upheld. The ALJ also recommends that Petitioner be required to complete at least six months of therapy and undergo another psychological evaluation before being eligible for consideration by the Board for reinstatement of her LVN credential.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed by either party and are addressed in the Findings of Fact and Conclusions of Law without further discussion here. On September 2, 2021, ALJ Keneshia Washington convened the hearing via videoconference. Petitioner appeared and represented herself. Staff was represented by Assistant General Counsel JoAnna Starr. The record was left open until September 9, 2021, to allow Staff the opportunity to submit the results of Petitioner's polygraph test.

II. DISCUSSION

A.   Background

Petitioner received a Certificate in Vocational Nursing from Southwest Mississippi Community College in Summit, Mississippi on August 8, 1986. Petitioner was licensed to practice vocational nursing in the State of Texas on December 8, 1988.[1] On or about April 4, 2017, through February 28, 2018, while employed with Ebenezer Home Health Care, Mesquite, Texas, Petitioner withdrew funds from the bank account of Patient Medical Record Number 796 (Patient) for her personal use. Petitioner subsequently repaid over $10,000 of the stolen funds to Patient to avoid prosecution.

Formal charges were filed on August 24, 2018. Petitioner waived notice and hearing, and agreed to entry of the order of voluntary surrender of her LVN credential ("Order"). On August 23, 2019, Petitioner signed a statement voluntarily surrendering the right to practice nursing in Texas. A copy of the statement is incorporated by reference into the Order. According to the Order, in connection with its acceptance of Petitioner's voluntary surrender of her license, the Board imposed the following conditions: 1) refrain from the practice of vocational nursing or identifying herself in a manner that would lead a person to believe that she is a vocational nurse; 2) refrain from petitioning for reinstatement of licensure until one year had elapsed from the date of the Agreed Order; and 3) upon petitioning for reinstatement, Petitioner must satisfy all then existing requirements for relicensure.

On August 24, 2020, Petitioner filed her Petition. On October 15, 2020, Petitioner completed a forensic psychological evaluation followed by a polygraph component over the next few days.[2] The Board denied the Petition on March 9, 2021, based on the results of the

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[1] Staff's Exhibits 1 and 7 include Petitioner's Petition and the Order whereby the Board accepted the voluntary surrender of Petitioner's LVN credential, respectively. The facts in the paragraphs below, until the next citation, are from Staff's Exhibits 1 and 7.

[2] Staff Exs. 6, 9.

psychological evaluation and Petitioner's history of financial exploitation of a patient.[3] On April 25, 2021, Petitioner requested a hearing on the Board's denial of her Petition.[4]

B.   Applicable Law

The procedures and standards for reinstatement of nursing licenses are set out in Texas Occupations Code §§ 301.453(c) and .467, and in Board Rule 22 Texas Administrative Code § 213.26.[5] A person whose Texas license to practice nursing has been revoked may apply for reinstatement of the license.[6] The burden of proof is on Petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension.[7]

Each individual who seeks to practice nursing in Texas must possess current fitness to practice.[8] This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas and applies in all eligibility and disciplinary matters.[9] An individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice.[10] If an individual exhibits conduct that raises questions about his/her fitness to practice, the Board may require the individual to undergo a physical and/or psychological evaluation that meets the criteria of Texas Occupations Code § 301.4521 and Board Rule 213.33 (relating to Factors Considered for Imposition of Penalties/Sanctions).[11] Utilizing the

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[3] Staff Ex. 2.

[4] Staff Ex. 3. *See also* 22 Tex. Admin. Code § 213.26(d).

[5] For ease of reference, the Board's rules shall be cited in the text as "Board Rule 213.xx."

[6] 22 Tex. Admin. Code § 213.26(a).

[7] 22 Tex. Admin. Code § 213.26(d).

[8] 22 Tex. Admin. Code § 213.29(a).

[9] 22 Tex. Admin. Code § 213.29(a).

[10] 22 Tex. Admin. Code § 213.29(b).

[11] 22 Tex. Admin. Code § 213.29(c).

results of the evaluation and the individualized facts of the case, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license).[12]

Pursuant to Board Rule 213.29(h)(1), the Board has issued Disciplinary Sanctions for Behavior Involving Fraud, Theft, and Deception (Fraud, Theft, and Deception Policy), a policy statement addressing behavior involving fraud, theft, and deception, whether or not it results in a criminal charge or conviction.[13] The Fraud, Theft, and Deception Policy states:

> The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized.[14]

The policy further explains, "Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time."[15]

In considering whether to reinstate a revoked license, the Board will evaluate: (1) the conduct which resulted in revocation of the license; (2) the conduct of the petitioner subsequent to the revocation; (3) the lapse of time since revocation; (4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and (5) the petitioner's present qualification to practice nursing based on his or her history of nursing related employment or education.[16]

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[12] 22 Tex. Admin. Code § 213.29(c).

[13] The Fraud, Theft, and Deception Policy is available on the Board's website at https://www.bon.texas.gov/pdfs/disciplinary_sanction_policies_pdfs/Fraud-Theft-Deception.pdf.

[14] *Id.*

[15] *Id.*

[16] 22 Tex. Admin. Code § 213.26(e).

Moreover, every individual who seeks to practice nursing in Texas must have good professional character related to the practice of nursing.[17] This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas.[18] The Board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors that indicate an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules, and generally accepted standards of nursing practice.[19] A determination that an individual does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of the Nursing Practice Act or a rule adopted by the Board and the individual's ability to effectively practice nursing.[20]

When evaluating the connection between the relevant conduct and the ability to effectively practice nursing, the Board will consider the following factors:

(1) whether the individual will be able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable;

(2) whether the individual will be able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting;

(3) whether the individual will be able to make appropriate judgments and decisions that could affect patients/clients and/or the public;

(4) whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including Board Rules 217.11 (relating to Standards of Nursing Practice) and 217.12 (relating to Unprofessional Conduct), and generally accepted standards of nursing practice; and

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[17] 22 Tex. Admin. Code § 213.27(a).

[18] 22 Tex. Admin. Code § 213.27(a).

[19] 22 Tex. Admin. Code § 213.27(b).

[20] 22 Tex. Admin. Code § 213.27(c).

(5) whether the individual will be able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm.[21]

Board Rule 217.11 lists the minimum acceptable standards of nursing practice and states that all vocational nurses must: 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;[22] implement measures to promote a safe environment for clients and others;[23] and know, recognize, and maintain professional boundaries of the nurse-client relationship.[24]

Board Rule 217.12 correlates to Texas Occupations Code § 301.452(b)(10) and includes the following as unprofessional conduct: causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;[25] violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial exploitation of the client or the client's significant other(s);[26] and misappropriating, in connection with the practice of nursing, anything of value or benefit, including but not limited to, any property, real or personal of the client, employer, or any other person or entity, or failing to take precautions to prevent such misappropriation.[27]

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[21] 22 Tex. Admin. Code § 213.27(c).

[22] 22 Tex. Admin. Code § 217.11(1)(A).

[23] 22 Tex. Admin. Code § 217.11(1)(B).

[24] 22 Tex. Admin. Code § 217.11(1)(J).

[25] 22 Tex. Admin. Code § 217.12(6)(C).

[26] 22 Tex. Admin. Code § 217.12(6)(D).

[27] 22 Tex. Admin. Code § 217.12(6)(G).

C.   Evidence

Staff presented the testimony of Dr. Frank A. Pugliese, Ph.D., PC and Dr. Kristin Benton, DNP, RN, and introduced the following exhibits, which were admitted into evidence without objection:

1. Petitioner's Petition for Reinstatement of Licensure;
2. Denial Letter;
3. Petitioner's Written Request for Appeal of Denial of Reinstatement;
4. Staff's Notice of Hearing;
5. Staff's Amended Notice of Hearing;
6. CONFIDENTIAL: Forensic Psychological Evaluation;
7. Petitioner's Voluntary Surrender Agreed Order;
8. CV/Resume: Kristin Benton, DNP, RN, Director of Nursing, Texas Boarding; and
9. Confidential Polygraph Examination Report.

Petitioner testified on her own behalf and relied on Staff's exhibits, specifically the character letters attached to the Petition in Staff's Exhibit 1. Petitioner offered a letter from a therapist less than forty-eight hours before the hearing. For ease of reference, the ALJ designated the letter as Petitioner's Exhibit 1. Staff objected on the grounds that the letter had not been filed timely, Staff did not have proper notice of the letter or time to investigate or verify the contents of the letter. Staff's objection was sustained because Petitioner did not show good cause for why the letter was not filed timely, and Petitioner's Exhibit 1 was not admitted to the record.

1.   Dr. Pugliese's Testimony and Forensic Psychological Evaluation Report

Dr. Pugliese is a licensed psychologist in Texas. He holds a bachelor's degree from Mount St. Mary's College in Emmitsburg, Maryland, a master of arts degree in clinical psychology from St. Johns University in Jamaica, New York, and a doctor of philosophy degree in psychology from the University of Southern Mississippi. Dr. Pugliese's first position after completing his education was in Arkansas in 1975 where he worked for two years managing three satellite mental health

facilities. He then relocated to Texas in 1977 where he served as Supervisor of Family services at MHMR,[28] under the umbrella of the Texas Health and Human Services, in Temple until April 1981. He then established his full-time private practice that he currently operates.

Pursuant to the direction of Staff, Petitioner underwent a psychological forensic evaluation by Dr. Pugliese on October 15, 2020. The referral from Staff was for a forensic psychological evaluation with a polygraph component. The basis for the assessment includes a clinical interview to gather personal background information, including relevant information for the reason for the referral, and behavioral observations. During the interview, Petitioner explained that she developed a strong personal relationship with Patient and confided in him that she and her husband were experiencing significant financial distress. She then claimed that Patient offered to help her out financially to relieve her and her husband of the intense pressure that they were experiencing. She stated that Patient provided her with his bank account number and gave her permission to authorize payments to different companies to reduce her balances and prevent more severe negative consequences. She stated that she initially verbalized appreciation to Patient for his willingness to help her despite the fact that she was aware at the time that her behavior was wrong. Petitioner explained to Dr. Pugliese that she became increasingly more "comfortable" in accessing Patient's account to obtain money for personal reasons without apprising him of the withdrawals. She maintained that she allowed herself to engage in the unacceptable behavior because she "was desperate." She estimated that she accessed Patient's bank account on approximately 15 different occasions during a period of about 10 months and was not thinking of the negative implications of her actions on herself or Patient at the time of her actions.

Petitioner indicated she accepted responsibility for her misconduct when confronted by Patient's brother. She also noted Patient denied giving her permission to access his bank account when questioned by his brother. Petitioner stated that she made a decision to enter into an agreement with Patient's family to pay them $10,000 to settle the claim and avoid prosecution. She admitted that she was humiliated and embarrassed by her actions and talked at length about the ramifications of her behavior on her relationship with her husband, children, employer, and

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[28] MHMR stands for Mental Health and Mental Retardation; however, the name of the agency has since changed.

friends. Petitioner indicated that she had never engaged in any similar dishonest behavior in the past and expressed a great deal of remorse for jeopardizing her reputation and ability to function as a nurse.

Dr. Pugliese administered psychological testing with two objectively scored inventories, the MMPI-2 and MCMI-III. The MMPI-2 yields a profile reflecting an individual's current level of functioning. Petitioner's profile showed no elevations on a clinical scale, suggesting that she is generally well adjusted, adaptive, and shows no impaired reasoning skills. Dr. Pugliese explained that individuals with this type of profile tend to be efficient in managing their responsibilities, have a positive opinion of themselves, and perceive themselves as having many desirable traits. On the MCMI-III Petitioner scored highest on the compulsive scale, indicating that disciplined traits are a prominent aspect of her personality style. The high score also indicates a tendency to be defensive about admitting to psychological problems and to accept blame.

Dr. Pugliese noted that although there were no major problems noted on the psychological testing, the polygraph examination strongly suggested there was deception indicated, arousing concerns about Petitioner's presentation and honesty. Hence, it is Dr. Pugliese's impression that Petitioner would not be able to consistently behave in accordance with Board Rules 213.27-.29 or the minimum nursing standard set forth in Board Rule 217.11. He is also of the opinion that there is a strong probability that Petitioner would not consistently avoid behaviors identified by the Board as constituting unprofessional conduct. Dr. Pugliese recommended that Petitioner undergo at least six months of comprehensive counseling to develop a greater degree of insight into her behavior prior to reapplying to the Board for reinstatement of her LVN credential.

2.   Petitioner's Testimony

Petitioner worked as an LVN from 1989 through the surrender of LVN credential in 2019. Petitioner provided several character letters from former coworkers and a personal friend attesting to her strengths as a nurse and a person, including self-direction, critical thinking, continuous improvement, teamwork, effective communication, and patient advocacy. Petitioner also provided

certificates showing the completion of nursing continuing education units (CEUs) while her license has been surrendered. Petitioner acknowledged that she financially exploited Patient and that the exploitation led to the voluntary surrender of her license. She expressed deep remorse for her actions.

Petitioner confirmed that while under her care, she saw Patient once a week. She confirmed that Patient was in his late 80s and suffered from several chronic illnesses, including diabetes, high blood pressure, dementia, and limited physical mobility. She stated that she did not consider Patient to be vulnerable in the sense that he was more susceptible to exploitation than other patients. She also described her relationship with Patient as a friendship and did not consider the friendship to constitute a boundary crossing. She also confirmed that she did not voluntarily self-disclose the patient exploitation to her employer or the Board but did so after her employer broached the subject with her. Petitioner stated on her Petition that she was unemployed at the time that she filed the Petition but testified that she is currently employed as a caregiver for a married couple, and that her responsibilities include preparing their meals, taking them to doctor's appointments, and helping them with showers. Petitioner also testified that she began weekly therapy sessions on July 23, 2021. She believes that her remorse for her actions, the two years of not working as an LVN, and the therapy sessions that she has completed make her eligible for the reinstatement of her LVN credential.

3.   Dr. Benton's Testimony

Dr. Benton is a licensed registered nurse and a Doctor of Nursing Practice degree holder. She worked as a registered nurse at several hospitals form January 1997 through December 2003. She was an associate professor and adjunct faculty with the vocational nursing program at Austin Community College for two years. She has served as Director of Nursing at the Board since January 2013. Her duties include overseeing the nursing department in approval and regulation of pre-licensure nursing education programs, the nursing practice, and advanced practice registered nursing licensure operations under the direction of the Executive Director. Moreover, she has contributed to Rule revisions and participates in the training of nursing through the Nurse

Jurisprudence and Ethics Course. Because of her education, experience as a registered nurse, and duties as Director of Nursing, she has expertise regarding the practice of nursing as a whole as well as Nursing Practice Act and Board Rules.

Dr. Benton reviewed the documents and listened to the testimony of Dr. Pugliese and Petitioner. She then discussed the application of the factors that the Board will consider regarding reinstatement of a surrendered license under Board Rule 213.26(e), the factors to determine if a person has good professional character under Board Rule 213.27(c), and the evaluation of Petitioner's present fitness to practice under Board Rule 213.29(b). Dr. Benton stated that, in her opinion, the factors under Board Rule 213.26(e) do not weigh in favor or reinstatement because of the seriousness of Petitioner's exploitation, Petitioner's current employment as a caregiver in the same setting in which the financial misconduct occurred, the relatively short time period that her license has been surrendered, the fact that she has not yet completed the six months of therapy recommended by Dr. Pugliese, and the results of the polygraph that showed deception in Petitioner's response regarding theft while working as a home health care worker. Dr. Benton also determined that the factors in Board Rule 213.27(c) do not weigh in favor of a finding that Petitioner has good professional character because Petitioner's misconduct shows that she is not capable of working in an autonomous role; her friendship with the patient showed a lack of capacity to recognize and honor interpersonal boundaries or make appropriate judgments and decisions. Her behavior also shows a deficiency in her ability to conform to the requirements of the Nursing Practice Act, according to Dr. Benton. Furthermore, Petitioner failed to promptly and fully self-disclose facts that would protect her patient from unnecessary risk or harm. Moreover, Dr. Benton found that Petitioner does not have present fitness to practice under Board Rule 213.29(b), given the results of Dr. Pugliese's assessment and the fact that she has not completed at least six months of therapy. Dr. Benton concluded that the totality of the factors that the Board considers for reinstatement do not weigh in Petitioner's favor.

III. ANALYSIS

Staff asserts that Petitioner is ineligible for reinstatement because she lacks good professional character based on the factors in Board Rule 213.27(c). Staff also contends that the totality of the factors listed in Board Rule 213.26(e) does not support Petitioner's reinstatement. Further, Staff argues that Petitioner is not presently fit to practice as an LVN based on the forensic psychological evaluation conducted by Dr. Pugliese, and because she has not completed his recommended minimum of six months of therapy.

A.   Requirements for Reinstatement Under Board Rule 213.26(e)

In considering reinstatement of a revoked license, the Board will evaluate certain factors outlined in Board Rule 213.26(e).[29] In this case, the conduct which led to the surrender of Petitioner's license included financial exploitation of a patient. Petitioner accessed Patient's bank account on approximately 15 different occasions during a period of about 10 months. Prior to the exploitation, Petitioner had worked as an LVN for around thirty years. Since the surrender of her license, Petitioner has not worked as an LVN for two years and continues to complete CEUs. Moreover, she has begun weekly therapy sessions. Despite the length of time that has passed, she has not completed at least six months of therapy as recommended by Dr. Pugliese. Even though she has not worked as an LVN since surrendering her credential, her work as an at home caregiver suggests that she has already reentered the at-home health care industry prior to fully understanding and coming to terms with the causes and impact of her financial exploitation of a patient. Based on the foregoing, the factors considered for reinstatement under Board Rule 213.26(e) do not weigh in favor of reinstating Petitioner's LVN credential at this time.

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[29] 22 Tex. Admin. Code § 213.26(e).

B.   Factors to Establish Good Professional Character Under Board Rule 213.27(c)

In determining whether an individual has good professional character related to the practice of nursing, the Board will evaluate certain factors outlined in Board Rule 213.27(c).[30] The financial exploitation in which Petitioner engaged occurred while Petitioner was providing home health care. Therefore, whether Petitioner can practice nursing in an autonomous role is questionable. Furthermore, Petitioner's development of a friendship with Patient demonstrates a failure to recognize and honor interpersonal boundaries appropriate to any therapeutic relationship or health care setting. Petitioner's actions also reveal a lack of understanding that it is inappropriate for a nurse to discuss her financial status or difficulties with a patient. As Dr. Benton explained, a friendship implies a mutual meeting of needs; however, the nurse-patient relationship is a professional one. The Fraud, Theft, and Deception Policy explains that the nurse-patient relationship is a dependent one and that patients, especially the elderly and persons with mental disorder, are vulnerable.[31] Petitioner's statement that the patient's dementia and other chronic illnesses did not make him a vulnerable person who was more susceptible exploitation illustrates a failure to make appropriate judgments regarding the patient. Her theft of the patient's funds on 15 occasions over 10 months demonstrates a prolonged inability to avoid making decisions that would negatively impact Patient. Petitioner's repeated decision to engage in financial exploitation shows an inability to conform her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, and generally accepted standards of nursing practice. Finally, Petitioner financially exploited Patient for months and did not take the initiative to disclose harm to Patient at any point during the 10-month period. Her ultimate disclosure was prompted by her employer's investigation into harm suffered by the patient. Based on the foregoing, the factors in Board Rule 213.27(c) do not support a determination that Petitioner has good professional character.

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[30] 22 Tex. Admin. Code § 213.27(c).

[31] The   Fraud,   Theft,   and   Deception   Policy   is   available   on   the   Board's   website   at https://www.bon.texas.gov/pdfs/disciplinary_sanction_policies_pdfs/Fraud-Theft-Deception.pdf.

C.   Fitness to Practice under Board Rule 213.29(b)

Each individual who seeks to practice nursing in Texas must possess current fitness to practice.[32] This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas and applies in all eligibility and disciplinary matters.[33] An individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice.[34] The burden of proof is on Petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension.[35]

Petitioner underwent a psychological evaluation with a polygraph component. Though the evaluation component did not reveal abnormalities, the polygraph indicated deception from Petitioner in connection with her statements regarding whether she committed theft of other patients in the past. Petitioner's admitted financial exploitation of Patient over a 10-month period and her potential deception regarding whether there were other instances of theft helped to form Dr. Pugliese's opinion that there is a strong probability that Petitioner would not consistently avoid behaviors identified by the Board as constituting unprofessional conduct. Dr. Pugliese recommended that Petitioner undergo at least six months of comprehensive counseling. Dr. Benton found that Dr. Pugliese's opinion and Petitioner's work as an at-home caregiver during the period that her license has been suspended but prior to her completion of the recommended therapy shows poor judgment and contributes to the factors that, in total, do not support reinstatement.

The ALJ finds Petitioner did not carry her burden to prove by a preponderance of the evidence that she is fit for licensure based on the overwhelming evidence to the contrary presented

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[32] 22 Tex. Admin. Code § 213.29(a).

[33] *Id.*

[34] 22 Tex. Admin. Code § 213.29(b).

[35] 22 Tex. Admin. Code § 213.26(d).

by Staff. Petitioner has failed to meet her burden of proving her present fitness to practice nursing and that she has good professional character. In conclusion, the preponderance of the evidence establishes that the Board should deny Petitioner's Petition for Licensure Reinstatement. The Board should also require that Petitioner complete at least six months of therapy and undergo another psychological evaluation prior to being considered for reinstatement. In support of the foregoing, the ALJ makes the following Findings of Fact and Conclusions of Law.

IV. FINDINGS OF FACT

1. Sandra Brennet Patterson (Petitioner) submitted a Petition for Licensure Reinstatement (Petition) seeking a reinstatement of her Licensed Vocational Nurse (LVN) credential.

2. The staff (Staff) of the Texas Board of Nursing (Board) denied the Petition.

3. Petitioner timely requested a hearing.

4. Petitioner completed a vocational nursing program on August 8, 1986, and was licensed to practice vocational nursing in the State of Texas on December 8, 1988.

5. On or about April 4, 2017, through February 28, 2018, while employed as an LVN with Ebenezer Home Health Care, Mesquite, Texas, Petitioner financially exploited Patient Medical Record Number 796 (Patient), in that she withdrew funds from Patient's bank account for her personal use. Petitioner subsequently repaid over $10,000 of the stolen funds to Patient to avoid prosecution.

6. Staff opened an investigation into Petitioner's misappropriation of Petitioner's funds.

7. On August 23, 2019, Petitioner signed a statement voluntarily surrendering her license to practice vocational nursing in the State of Texas.

8. Among other provisions, the Agreed Order required that, upon petitioning for reinstatement, Petitioner must satisfy all then-existing requirements for relicensure.

9. On August 24, 2020, Petitioner filed a Petition for Licensure Reinstatement (Petition).

10. On October 15, 2020, Petitioner completed a forensic psychological evaluation performed by Dr. Frank A. Pugliese, Ph.D., PC, followed by a polygraph component in the next few days.

11. During the clinical interview, Petitioner informed Dr. Pugliese that she developed a strong personal relationship with Patient and confided in him that she and her husband were

experiencing significant financial distress. She then obtained Patient's bank account number and authorized payments to different companies to reduce her balances and prevent more severe negative consequences. She stated that she initially verbalized appreciation to Patient for his willingness to help her despite the fact that she was aware at the time that her behavior was wrong.

12. Petitioner explained to Dr. Pugliese that she became increasingly more "comfortable" in accessing Patient's account to obtain money for personal reasons without apprising him of the withdrawals. She maintained that she allowed herself to engage in the unacceptable behavior because she "was desperate."

13. Petitioner estimated that she accessed Patient's bank account on approximately 15 different occasions during a period of about 10 months and was not thinking of the negative implications of her actions on herself or her patient at the time of her actions.

14. Petitioner admitted that she was humiliated and embarrassed by her actions and talked at length about the ramifications of her behavior on her relationship with her husband, children, employer, and friends. Petitioner indicated that she had never engaged in any similar dishonest behavior in the past and expressed a great deal of remorse for jeopardizing her reputation and ability to function as a nurse.

15. Dr. Pugliese administered psychological testing with two objectively scored inventories, the MMPI-2 and MCMI-III.

16. The MMPI-2 yields a profile reflecting an individual's current level of functioning. Petitioner's profile showed no elevations on a clinical scale, suggesting that she is generally well-adjusted, adaptive, and shows no impaired reasoning skills. Dr. Pugliese explained that individuals with this type of profile tend to be efficient in managing their responsibilities, have a positive opinion of themselves, and perceive themselves as having many desirable traits.

17. On the MCMI-III Petitioner scored highest on the compulsive scale, indicating that disciplined traits are a prominent aspect of her personality style. The high score also indicates a tendency to be defensive about admitting to psychological problems and to accept blame.

18. Dr. Pugliese noted that although there were no major problems noted on the psychological testing, the polygraph examination strongly suggested there was deception indicated, arousing concerns about Petitioner's presentation and honesty.

19. Dr. Pugliese recommended that Petitioner undergo at least six months of comprehensive counseling to develop a greater degree of insight into her behavior prior to reapplying to the Board for reinstatement of her LVN credential.

20.   Petitioner began weekly therapy sessions on July 23, 2021. To date, Petitioner has not successfully completed the recommended six months of therapy.

21.   The Board denied Petitioner's Petition on March 9, 2021.

22.   On April 25, 2021, Petitioner requested a hearing on the Board's denial of her Petition for Licensure Reinstatement.

23.   On May 27, 2021, Staff sent Petitioner a Notice of Hearing. 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.

24.   On June 18, 2021, Staff sent Petitioner its First Amended Notice of Hearing with updated information regarding how to access the videoconference hearing.

25.   On September 2, 2021, State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Keneshia Washington convened the hearing on the merits via videoconference. Petitioner appeared and represented herself. Staff was represented by Assistant General Counsel JoAnna Starr.

26.   The record closed on September 9, 2021, to allow time for Staff to file a copy of the results of the polygraph test.

V. CONCLUSIONS OF LAW

1.   The Board has jurisdiction over the licensing and discipline of nurses. Tex. Occ. Code ch. 301.

2.   SOAH has jurisdiction over contested cases referred by the Board, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 301.459; Tex. Gov't Code ch. 2003.

3.   Petitioner received proper and timely notice of hearing. Tex. Gov't Code §§ 2001.051, .052.

4.   A person whose license to practice nursing in this state has been revoked may apply for reinstatement of the license. 22 Tex. Admin. Code § 213.26(a).

5.   The burden of proof is on the Petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension. 22 Tex. Admin. Code § 213.26(d).

6.   Each individual who seeks to practice nursing in Texas must possess current fitness to practice. 22 Tex. Admin. Code § 213.29(a).

7.   An individual's fitness to practice will be determined by evaluating the individual's ability to consistently comply with the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice. 22 Tex. Admin. Code § 213.29(b).

8.   If an individual exhibits conduct that raises questions about his/her fitness to practice, the Board may require the individual to undergo a physical and/or psychological evaluation that meets the criteria of Texas Occupations Code § 301.4521 and 22 Texas Administrative Code § 213.33. 22 Tex. Admin. Code § 213.29(c).

9.   Utilizing the results of the evaluation and the individualized facts of the case, the Board may deny licensure (including renewal, reinstatement/reactivation, or the return to direct patient care from a limited license). 22 Tex. Admin. Code § 213.29(c).

10.   Pursuant to 22 Texas Administrative Code § 213.29(h)(1), the Board has issued Disciplinary Sanctions for Behavior Involving Fraud, Theft, and Deception (Fraud, Theft, and Deception Policy), a policy statement addressing behavior involving fraud, theft, and deception, whether or not it results in a criminal charge or conviction. *Available at* https://www.bon.texas.gov/pdfs/disciplinary_sanction_policies_pdfs/Fraud-Theft-Deception.pdf.

11.   "The nurse-patient relationship is a dependent one, and patients under the care of a nurse are, by their very nature, vulnerable. This is especially true of the elderly, children, persons with mental disorders, sedated or anesthetized patients, patients whose mental or cognitive ability is compromised, and patients who are disabled or immobilized." Fraud, Theft, and Deception Policy.

12.   "Because patients in autonomous healthcare settings are particularly vulnerable to acts involving fraud, theft, and deception, an individual who has previously exhibited such conduct will likely be precluded from working in a home health or independent practice setting for a period of time." Fraud, Theft, and Deception Policy.

13.   In considering whether to reinstate a revoked license, the Board will evaluate: (1) the conduct which resulted in revocation of the license; (2) the conduct of the petitioner subsequent to the revocation; (3) the lapse of time since revocation; (4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and (5) the petitioner's present qualification to practice nursing based on his or her history of nursing related employment or education. 22 Tex. Admin. Code § 213.26(e).

14.   This requirement includes all individuals seeking to obtain or retain a license or privilege to practice nursing in Texas. 22 Tex. Admin. Code § 213.27(a).

15. The Board defines good professional character as the integrated pattern of personal, academic, and occupational behaviors that indicate an individual is able to consistently conform his/her conduct to the requirements of the Nursing Practice Act, the Board's rules, and generally accepted standards of nursing practice. 22 Tex. Admin. Code § 213.27(b).

16. A determination that an individual does not have good professional character related to the practice of nursing must be based on a showing by the Board of a clear and rational connection between a violation of the Nursing Practice Act or a rule adopted by the Board and the individual's ability to effectively practice nursing. 22 Tex. Admin. Code § 213.27(c).

17. When evaluating the rational connection between the relevant conduct and the ability to effectively practice nursing, the Board will consider the following factors: (1) whether the individual will be able to practice nursing in an autonomous role with patients/clients, their families, significant others, healthcare professionals, and members of the public who are or who may become physically, emotionally, or financially vulnerable; (2) whether the individual will be able to recognize and honor the interpersonal boundaries appropriate to any therapeutic relationship or health care setting; (3) whether the individual will be able to make appropriate judgments and decisions that could affect patients/clients and/or the public; (4) whether the individual has exhibited an inability to conform his/her behavior to the requirements of the Nursing Practice Act, Board rules and regulations, including §217.11 (relating to Standards of Nursing Practice) and §217.12 (relating to Unprofessional Conduct) of this title, and generally accepted standards of nursing practice; and (5) whether the individual will be able to promptly and fully self-disclose facts, circumstances, events, errors, and omissions, when such disclosure could enhance the health status of patients/clients or the public and/or could protect patients/clients or the public from an unnecessary risk of harm. 22 Tex. Admin. Code § 213.27(c).

18. All vocational nurses must 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. 22 Tex. Admin. Code § 217.11(1)(A).

19. All vocational nurses must implement measures to promote a safe environment for clients and others. 22 Tex. Admin. Code § 217.11(1)(B).

20. All vocational nurses must know, recognize, and maintain professional boundaries of the nurse-client relationship. 22 Tex. Admin. Code § 217.11(1)(J).

21. Unprofessional conduct includes causing or permitting physical, emotional or verbal abuse or injury or neglect to the client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board. 22 Tex. Admin. Code § 217.12(6)(C).

22. Unprofessional conduct includes violating professional boundaries of the nurse/client relationship including but not limited to physical, sexual, emotional or financial

exploitation of the client or the client's significant other(s). 22 Tex. Admin. Code § 217.12(6)(D).

23.   Petitioner committed unprofessional conduct by failing to maintain professional boundaries of the nurse-client relationship. Tex. Occ. Code § 301.452(b)(10); 22 Tex. Admin. Code § 217.12(6)(C), (D), (G).

24.   Petitioner failed to meet minimum practice standards that prohibit violations of the professional boundaries of the nurse-client relationship, including physical, sexual, or emotional exploitation of the client. Tex. Occ. Code § 301.452(b)(13); 22 Tex. Admin. Code § 217.11(1)(A), (B), (J).

25.   The Board may impose conditions for reinstatement that the petitioner must satisfy before the Board may issue an unrestricted license. Tex. Occ. Code § 301.453(d); 22 Tex. Admin. Code § 213.26(a).

26.   Petitioner has failed to meet her burden of proving her present fitness to practice nursing.

27.   Petitioner has failed to meet her burden of proving that she has good professional character.

28.   The ALJ recommends that the Board sustain its denial of Petitioner's Petition.

29.   The ALJ recommends that Petitioner be required to undergo at least 6 months of therapy and a follow up psychological evaluation prior to consideration by the Board of reinstatement of her LVN credential.

SIGNED November 8, 2021.

Keneshia Washington
KENESHIA WASHINGTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

December 3, 2021

Joanna Starr for Katherine A. Thomas, M.N., R.N.   **VIA E-FILE TEXAS**
Executive Director
Texas Board of Nursing
333 Guadalupe, Tower III, Suite 460
Austin, TX 78701

      RE: **Docket No. 507-21-2333; Sandra Brennet Patterson v. Texas Board of Nursing**

Dear Ms. Thomas:

On November 8, 2021, the undersigned Administrative Law Judge (ALJ) issued a Proposal for Decision (PFD) in this case. Please be advised that the time period to file exceptions to the PFD 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,

Keneshia Washington
Administrative Law Judge

KW/nm

xc: Joanna Starr, Texas Board of Nursing, 333 Guadalupe, Tower III, Ste. 460, Austin, TX 78701 - **VIA E-FILE TEXAS**
       Sandra Brennet Patterson, 2001 Ming Drive, Fort Worth, TX 76134 - **VIA E-FILE TEXAS**