



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.
William O. Morrison
Executive Director of the Board

DOCKET NUMBER 507-22-2199

**IN THE MATTER OF
PERMANENT CERTIFICATE
NUMBER 315193,
ISSUED TO
SHIVONNE MARIE HARGIS**

**§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS**

OPINION AND ORDER OF THE BOARD

**TO: SHIVONNE MARIE HARGIS
841 COUNTY RD 1555
BONHAM, TX 75418**

**BRENT MCCABE
ADMINISTRATIVE LAW JUDGE
PO BOX 13025
AUSTIN, TX 78711-3025**

At the regularly scheduled public meeting on October 20-21, 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, and the Board agrees, that the Respondent's conduct warrants a second tier, sanction level II sanction for her violations of §301.452(b)(1) and (10).¹

Licensure suspension, either enforced or probated, or licensure revocation is authorized for a second tier, sanction level II sanction for a violation of §301.452(b)(10) and (13).² Based on the findings of the ALJ, the Board agrees with the ALJ that an enforced suspension followed by three years of probationary stipulations is the most appropriate sanction in this matter.³

The Respondent's violations were not isolated in nature, and the Respondent, instead, violated the terms of the prior Board Order multiple times within a short period of time. The ALJ found these factors, along with the fact the violations related to alcohol, to be aggravating.⁴ The ALJ found no mitigating factors.⁵

Therefore, after carefully reviewing and considering the aggravating and mitigating factors identified by the ALJ in this case, the Board has determined, pursuant to the Board's Disciplinary Matrix and the Board's rules, including 22 Tex. Admin. Code §213.33(e)(6), that an enforced suspension followed by three years of probationary stipulations is the most appropriate sanction in this case.

Consistent with the ALJ's recommendation, the Board finds that the Respondent should be required to complete a nursing jurisprudence and ethics course and a critical thinking course.⁶ The Board also agrees with the ALJ that the Respondent's nursing practice should be supervised during the probationary period. The Board finds that one year of direct supervision followed by indirect supervision for the duration of the Order should sufficiently ensure the Respondent's safe practice. Supervisory stipulations are intended to prevent additional violations from occurring by ensuring that any deficiencies in the Respondent's practice will be discovered quickly and remediated appropriately. Further, one year of direct supervision followed by at least one year of indirect supervision is consistent with the Board's precedent in cases involving a multi-year disciplinary order. 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. The Board further agrees the Respondent should be limited in the settings in which she can work for the first year of the Order, should abstain from prohibited substances, should undergo random drug testing, and should participate in support group meetings. These stipulations are also consistent with 22 Tex. Admin. Code §213.33(e)(6).⁷

¹ See page 11 of the PFD.

² 22 Texas Administrative Code §213.33(b).

³ See pages 10-13 of the PFD.

⁴ See adopted Conclusion of Law Number 8 and page 12 of the PFD.

⁵ See adopted Conclusion of Law Number 9.

⁶ 22 Tex. Admin. Code §213.33(f) requires every order issued by the Board to include participation in a program of education, which at a minimum, shall include a review course in nursing jurisprudence and ethics; see also page 16 of the PFD.

⁷ 22 Tex. Admin. Code §213.33(e)(6), which authorizes suspension of licensure, probated or enforced, and reasonable probationary stipulations that may include remedial education courses and practice for at least two years under the direction of a nurse designated by the Board, as well as limitations on nursing activities/practice settings, drug testing requirements, and counseling/treatment requirements.

IT IS THEREFORE ORDERED that Vocational Nurse License Number 315193, previously issued to SHIVONNE MARIE HARGIS, to practice nursing in the State of Texas is/are hereby **SUSPENDED** and said suspension is **ENFORCED** until RESPONDENT:

- A. Completes an appropriate treatment program approved by the Board;
- B. Provides documentation of successful completion; and
- C. Obtains twelve (12) consecutive months of sobriety, which may be demonstrated by monthly urine drug screens consistent with the "DRUG AND ALCOHOL RELATED REQUIREMENTS" of this Order.

Any relapse prior to the completion of the required twelve (12) consecutive months of sobriety will result in revocation or, at a minimum, an extension of the enforced suspension until such twelve (12) consecutive months of sobriety and additional treatment have been attained.

IT IS FURTHER ORDERED, upon verification of successful completion of the above requirements, the Suspension will be **STAYED**, and RESPONDENT will be placed on **PROBATION** for a minimum of three (3) years **AND** until RESPONDENT fulfills the additional requirements of this Order.

- D. RESPONDENT SHALL submit an application for licensure renewal/reactivation, as applicable, and pay all re-registration fees, if any, and RESPONDENT'S licensure status in the State of Texas will be activated and updated to current status and to reflect the applicable conditions outlined herein.
- E. This Order SHALL apply to any and all future licenses issued to RESPONDENT to practice nursing in the State of Texas.
- F. This Order SHALL be applicable to RESPONDENT'S nurse licensure compact privileges, if any, to practice nursing in the State of Texas.
- g. Until successfully completed, RESPONDENT may not practice nursing in the State of Texas except in accordance with the terms of this Order.
- H. 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.

I. 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.

II. SUPERSEDING ORDER

IT IS FURTHER ORDERED that the sanction and conditions of this Order SHALL supersede all previous stipulations required by any Order entered by the Texas Board of Nursing.

III. UNDERSTANDING BOARD ORDERS

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 suspension being stayed, 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. **The course "Sharpening Critical Thinking Skills,"** a 3.6 contact hour online program provided by the National Council of State Boards of Nursing (NCSBN) International Center for Regulatory Scholarship (ICRS).

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 twelve (12) quarterly periods [three (3) years] of employment. This requirement will not be satisfied until twelve (12) 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. **No Night or Rotating Shifts, Overtime, or On-Call:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse on the night shift, rotate shifts, work overtime, accept on-call assignments, or be used for coverage on any unit other than the identified, predetermined unit(s) to which RESPONDENT is regularly assigned.
- D. **No Critical Care:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT SHALL NOT practice as a nurse in any critical care area. Critical care areas include, but are not limited to, intensive care units, emergency rooms, operating rooms, telemetry units, recovery rooms, and labor and delivery units.
- E. **No Administration of Controlled Medications:** For the first year [four (4) quarters] of employment as a Nurse under this Order, RESPONDENT

SHALL NOT administer or have any contact with controlled substances, Nubain, Stadol, Dalgan, Ultram, Propofol, or other synthetic opiates.

- F. **Direct Supervision:** For the first year [four (4) quarters] of employment as a Nurse under this order, RESPONDENT SHALL be directly 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. Direct supervision requires another nurse, as applicable, to be working on the same unit as RESPONDENT and immediately available to provide assistance and intervention. RESPONDENT SHALL work only on 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.

- G. **Indirect Supervision:** For the remainder of the probation period, 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.

- H. **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 twelve (12) quarters [three (3) years] of employment as a nurse.

VI. DRUG AND ALCOHOL RELATED REQUIREMENTS

- A. **While under the terms of this Order, RESPONDENT SHALL abstain from the use of alcohol, nalbuphine, propofol and all controlled substances,** except as prescribed by a licensed practitioner for a legitimate purpose. If prescribed, RESPONDENT SHALL CAUSE the

licensed practitioner to submit a written report identifying the medication, dosage and the date the medication was prescribed. The report shall be submitted directly to the office of the Board by the prescribing practitioner, within ten (10) days of the date of the prescription. In the event that the prescriptions for controlled substances are required for periods of two (2) weeks or longer, the Board may require and RESPONDENT SHALL submit to a pain management and/or chemical dependency evaluation by a Board approved evaluator. The performing evaluator must submit a written report meeting the Board's requirements to the Board's office within thirty (30) days from the Board's request.

B. While working as a nurse under the terms of this Order, RESPONDENT SHALL submit to random periodic screens for alcohol, nalbuphine, propofol and all controlled substances. The Board will provide instructions on how to enroll in the Board's drug and alcohol testing program following the entry of this Order and screening will begin when RESPONDENT obtains employment and submits the Notification of Employment form to the Board.

- For the first three (3) month [1st quarter] period RESPONDENT works as a nurse under the terms of this Order, random screens shall be performed at least once per week.
- For the next three (3) month [2nd quarter] period, random screens shall be performed at least twice per month.
- For the next six (6) month period [3rd & 4th quarters], random screens shall be performed at least once per month.
- For the remainder of the probation period, if any, random screens shall be performed at least once every three (3) month quarterly period.

All random screens SHALL BE conducted through urinalysis. Any test result for a period of time in which the RESPONDENT is not working as a nurse under the terms of this Order will not count towards satisfaction of this requirement. All screens shall be properly monitored and produced in accordance with the Board's policy on Random Drug Testing. A complete chain of custody shall be maintained for each specimen obtained and analyzed. RESPONDENT SHALL be responsible for the costs of all random drug screening during the stipulation/probation period.

Specimens shall be screened for any or all of the following substances and/or their metabolites:

Amphetamine	Methamphetamine	MDMA
MDA	Alprazolam	Diazepam
Alpha-o-alprazolam	Alpha-Hydroxytriazolam	Clonazepam
Desmethyldiazepam	Lorazepam	Midazolam
Oxazepam	Temazepam	Amobarbital
Butabarbital	Butalbital	Pentobarbital

Phenobarbital	Secobarbital	Codeine
Hydrocodone	Hydromorphone	Methadone
Morphine	Opiates	Oxycodone
Oxymorphone	Propoxyphene	Cannabinoids
Cocaine	Phencyclidine	Ethanol
Heroin	Fentanyl	Tramadol
Meperidine	Carisoprodol	Butorphanol
Nalbuphine	Ketamine	Propofol

Upon enrollment in the Board's drug and alcohol testing program, **RESPONDENT SHALL, on a daily basis, call or login online to the Board's designated drug and alcohol testing vendor to determine whether or not RESPONDENT has been selected to produce a specimen for screening that day** and SHALL, if selected, produce a specimen for screening that same day at an approved testing location and/or comply with any additional instructions from the vendor or Board staff. Further, **a Board representative may appear** at the RESPONDENT'S place of employment at any time during the probation period and require RESPONDENT to produce a specimen for screening.

Consequences of Positive or Missed Screens. Any positive result for which RESPONDENT does not have a valid prescription or refusal to submit to a drug or alcohol screen may subject RESPONDENT to further disciplinary action, including TEMPORARY SUSPENSION pursuant to Section 301.4551, Texas Occupations Code, or REVOCATION of Respondent's license(s) and nurse licensure compact privileges, if any, to practice nursing in the State of Texas. Further, failure to report for a drug screen, excessive dilute specimens, or failure to call in for a drug screen may be considered the same as a positive result or refusal to submit to a drug or alcohol screen.

- C. **While under the terms of this Order, RESPONDENT SHALL attend at least two (2) support group meetings each week**, one of which must be for substance abuse and provided by Alcoholics Anonymous, Narcotics Anonymous, or another comparable recovery program that has been pre-approved by the Board. RESPONDENT SHALL provide acceptable evidence of attendance. Acceptable evidence shall consist of a written record of at least: the date of each meeting; the name of each group attended; and the signature and printed name of the chairperson of each group attended by RESPONDENT. RESPONDENT SHALL submit the required evidence on the forms provided by the Board at the end of every three (3) month quarterly period. No duplications, copies, third party signatures, or any other substitutions will be accepted as evidence.

VII. CONSEQUENCES OF CONTINUED NONCOMPLIANCE

Continued noncompliance with the unfulfilled requirements of this or any Order previously issued by the Texas Board of Nursing, as applicable, may result

in further investigation and subsequent disciplinary action, including denial of licensure renewal or revocation of RESPONDENT'S license(s) and/or privileges to practice nursing in the State of Texas.

VIII. FURTHER COMPLAINTS

If, during the period of probation, an additional allegation, accusation, or petition is reported or filed against RESPONDENT'S license(s), the probationary period shall not expire and shall automatically be extended until the allegation, accusation, or petition has been acted upon by the Board.

IX. 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 October, 2022.

TEXAS BOARD OF NURSING



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

Attachment: Proposal for Decision; 507-22-2199 (July 13, 2022)

FILED
507-22-2199
7/13/2022 11:57 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK



ACCEPTED
507-22-2199
7/13/2022 12:59 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 13, 2022

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: SOAH Docket No. 507-22-2199; Texas Board of Nursing v.
Shivonne Marie Hargis**

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 Texas Administrative Code § 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

Brent McCabe
Presiding Administrative Law Judge

Enclosure

cc: JoAnna Starr, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 - **VIA EFILE TEXAS**
Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 (with 1 CD of Hearing) - **VIA EFILE TEXAS and INTERAGENCY MAIL**
Shivonne Marie Hargis, 841 County Road 1555, Bonham, TX 75418 - **VIA EFILE TEXAS**

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS BOARD OF NURSING,
v.
SHIVONNE MARIE HARGIS, LVN #315193**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Board of Nursing (Board) alleges that Shivonne Marie Hargis (Respondent), a licensed vocational nurse (LVN), failed to comply with the terms of an agreed-to Board order, effective November 9, 2021 (Agreed Order), by using alcohol. The Administrative Law Judge (ALJ) concludes that Staff met its burden to prove its allegations and recommends that the Board suspend Respondent's license until she receives treatment and achieves one year of verified sobriety, followed by a three-year probated suspension with stipulations.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

On March 25, 2022, the Board temporarily suspended Respondent's license pursuant to Texas Occupations Code section 301.4551. On March 28, 2022, Staff sent Respondent notice of a probable cause hearing. An amended notice was sent March 29, 2022. The probable cause hearing was convened on April 6, 2022, before State Office of Administrative Hearings (SOAH) ALJ Robert Pemberton. On April 7, 2022, ALJ Pemberton issued Order No. 2 continuing the suspension of Respondent's license pending a final Board order.

ALJ Brent McCabe of SOAH convened a hearing on the merits convened via Zoom videoconference on May 17, 2022. Staff was represented by Assistant General Counsel JoAnna Starr. Respondent appeared and represented herself. The record closed the same day.

There are no contested issues of notice or jurisdiction in this case; therefore, those matters are addressed solely in the findings of fact and conclusions of law.

II. APPLICABLE LAW

Pursuant to the Nursing Practice Act (Act), a nurse is subject to disciplinary action for violating a Board order.¹ Additionally, a nurse may be disciplined for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public.² The Board defines "unprofessional conduct" to

¹ Tex. Occ. Code § 301.451(b)(1).

² Tex. Occ. Code § 301.451(b)(10).

include: (1) a positive drug screen for which there is no lawful prescription, and (2) violating an order of the Board.³ The Board identifies these behaviors as acts likely to deceive, defraud, or injure clients or the public.⁴

When a nurse violates the Act or related rules, the Board is required to impose a disciplinary sanction, which can range from remedial education to license revocation.⁵ The Board and SOAH are required to use the Board's Disciplinary Matrix in all disciplinary matters.⁶ The Disciplinary Matrix categorizes violations into tiers, and into sanction levels within tiers, based on the seriousness of the offense and risk of harm to patients or the public. Aggravating and mitigating factors are contained in the Disciplinary Matrix as well as Board Rule 213.33 and must be considered by the Board and SOAH.⁷

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.⁸

III. EVIDENCE

At the hearing, Staff offered the testimony of Dwain Fuller and Will Collie. Staff offered 10 exhibits, which were admitted. Respondent offered one exhibit, which was admitted. Additionally, the audio recording of the testimony of

³ 22 Tex. Admin. Code § 217.12(10)(D), (11)(B).

⁴ 22 Tex. Admin. Code § 217.12 ¶ 1.

⁵ Tex. Occ. Code § 301.453; 22 Tex. Admin. Code § 217.33(e).

⁶ 22 Tex. Admin. Code § 213.33(b).

⁷ 22 Tex. Admin. Code § 213.33(c).

⁸ 1 Tex. Admin. Code § 155.427; *see also Granek v. Tex. State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

Will Collie and Respondent at the probable cause hearing was admitted as Joint Exhibit 1.

A. PETITIONER'S EVIDENCE

1. Agreed Order

On November 9, 2021, the Board issued the Agreed Order, to which Respondent agreed on October 12, 2021. Section VI.A of the Terms of Order states: "While under the terms of this Order, Respondent shall abstain from the use of alcohol, nalbuphine, propofol and all controlled substances, except as prescribed by a licensed practitioner for a legitimate purpose."⁹ The Agreed Order also provides that a positive test may result in further disciplinary action, including temporary suspension or revocation of Respondent's license.¹⁰ In Respondent's certification attached to the Agreed Order, Respondent acknowledged that a failure to comply with the terms of the Agreed Order would subject her to investigation and disciplinary sanction, including possible revocation of her license or privileges to practice nursing in the State of Texas.¹¹

2. Urinalysis Results

On three occasions, Respondent tested positive for ethyl glucuronide (EtG) and ethyl sulfate (EtS), which are metabolites of alcohol, at the following levels:

⁹ Staff Ex. 3c at 13 (emphasis omitted).

¹⁰ Staff Ex. 3c at 15.

¹¹ Staff Ex. 3c at 16.

Date	EtG (threshold = 250 ng/ml)	EtS (threshold = 100 ng/ml)
January 10, 2022	595 ng/ml	260 ng/ml
January 17, 2022	>10,000 ng/ml	4424 ng/ml
February 22, 2022	1,216 ng/ml	495 ng/ml ¹²

3. Testimony of Will Collie

Will Collie is an expert in toxicology and a laboratory supervisor at MedTox Laboratories, Inc. (MedTox), which is the facility that performed the testing and provided the test results relevant to this case. He testified at both the hearing on the merits and the probable cause hearing.

Mr. Collie testified about the chain of custody and control procedures that MedTox uses to ensure the validity of the testing and verify its results. He explained that the tests are performed in two stages: a screening stage and a confirmation stage. He testified that if a substance is found to be positive at the screening stage, the result is then confirmed by the additional confirmation testing. He testified that testing methods used for each of these tests are reliable methods in the toxicology industry and are required to remain a certified laboratory.

¹² Staff Ex. 4 at 5-6; Staff Ex. 5 at 5-6; Staff Ex. 8 at 5-6.

Mr. Collie testified that EtG and EtS are markers for alcohol consumption. While ethyl alcohol may show up in a urine sample, EtG and EtS are present longer in the sample, with EtG and EtS present for up to 80 hours after consumption and ethyl alcohol no longer present after 24 hours.

Mr. Collie testified that it is possible to have a positive test for EtG and EtS through incidental use or ingestion—such as drinking non-alcoholic beers, eating fermented fruits or foods that contain alcohol, or using an alcohol-based hand sanitizer or mouthwash. However, Mr. Collie testified that the EtG results from incidental use are typically less than 200 ng/ml and the EtS results less than 100 ng/ml. He testified that, to reduce the risk of a false positives based on incidental use, the tests-at-issue used a threshold of 250 ng/ml for EtG and 100 ng/ml for EtS. He testified that this threshold is a middle ground where an upper threshold amount of 500 ng/ml for EtG is the accepted safe zone where it is nearly impossible for the result to be caused by incidental use. Mr. Collie also testified that even in cases of extensive incidental use—for example, consistent and continuous use of hand sanitizer—the amount of EtS remained below 100 ng/ml as EtS is primarily the result of alcohol ingestion and not skin absorption.

a) January 10, 2022, Test

Mr. Collie testified that MedTox followed all chain of custody and control procedures for the January 10, 2022, test. He testified that the EtG and EtS levels in Respondent's sample was beyond the threshold set for a positive result. He acknowledged the possibility that extreme and extensive incidental use of hand sanitizers could have resulted in the EtG levels found in this test. However, he

concluded that this explanation would be possible but unlikely in a practical, real-world sense.

b) January 17, 2022, Test

Mr. Collie testified that MedTox followed all chain of custody and control procedures for the January 17, 2022, test. He testified that the EtG reading was above the upper limit of their machine calibration, which means that MedTox cannot accurately provide a specific number and can only conclude that it is greater than 10,000 ng/ml. Mr. Collie testified that he is not aware of any situation where incidental use or exposure would justify EtG and EtS results this high.

c) February 22, 2022, test

Mr. Collie testified that MedTox followed all chain of custody and control procedures for February 22, 2022, test. Like the other tests, Mr. Collie concluded that it is unlikely that levels of EtG and EtS this high would be the result of incidental use.

4. Testimony of Dwain Fuller

Dwain Fuller is a board-certified toxicologist who reviewed Respondent's test results and an expert in the field of toxicology.

Mr. Fuller's testimony is largely consistent with Mr. Collie's testimony. Mr. Fuller testified that EtG and EtS may be present in a sample as a result of incidental use. Mr. Fuller described a study in which a person reached EtG levels comparable to Respondent's January 10th results by applying hand sanitizer from

hands to elbows every 15 minutes for eight hours a day. He testified that, outside the context of a study, a person using hand sanitizer in a typical manner would not be expected to have such elevated EtG levels. He testified that foods cooked in alcohol have most of the alcohol cooked off except for certain foods like a traditional rum cake, which has a significant amount of alcohol and should be avoided by a person abstaining from alcohol. Instead, he testified that the most common instances of incidental use are hand sanitizer and mouthwash. Mr. Fuller concluded that it would very unlikely that these incidental uses would cause the elevated levels found in Respondent's January 10th and February 22nd samples. He also testified that he is unaware of any incidental use that could result in a EtG and EtS concentration as high as the results from the January 17, 2022, specimen.

B. RESPONDENT'S EVIDENCE

Respondent did not testify at the hearing on the merits but offered a personal statement, dated April 6, 2022, and her testimony at the probable cause hearing.

In her personal statement, she denies purposefully ingesting alcohol since the Agreed Order was entered.¹³ She states that, to avoid any potential question as to her sobriety, she has: (1) switched sleep aids to those not containing alcohol, (2) stopped using mouthwash, and (3) reduced her use of her of acetaminophen with codeine, which is prescribed to her.¹⁴ She is not an alcoholic and, prior to the Agreed Order, had only the occasional glass of wine or cocktail over dinner.¹⁵ She

¹³ Resp. Ex. 1 at 3.

¹⁴ Resp. Ex. 1 at 3.

¹⁵ Resp. Ex. 1 at 3.

has never been in meaningful trouble with the law or at her employment.¹⁶ She states that she is a trustworthy staff member whose dedication to patient safety has never been questioned.¹⁷ In her statement, she determines that her positive urinalysis result for alcohol is only possible through two sources: (1) a dinner where the main course was cooked with alcohol over the Christmas or New Years' holidays or (2) excessive use of hand sanitizer during work given her employer's COVID-19 protocols.¹⁸ Respondent states that she has followed the instructions in the Agreed Order and taken every test possible.¹⁹ She reasons that if she was ingesting alcohol during this time, she would have sought an excuse from taking the drug and alcohol test.²⁰ She states that she would never place her patients' lives in jeopardy.²¹ Respondent concludes that she is not a drug addict or an alcoholic and is attempting to comply with the Agreed Order as best she can.²²

Respondent's testimony at the probable cause hearing echoes her personal statement. She testified that she has followed the Agreed Order and has taken every test. She denied consuming any alcohol intentionally. She testified that her late Christmas dinner was cooked in whisky, of which she was unaware, at the time, and could not taste or smell after she contracted COVID-19. She testified that she is reliable and has never put a patient in danger. In her testimony, she questioned the accuracy or validity of the test results because she stated that the screening

¹⁶ Resp. Ex. 1 at 3.

¹⁷ Resp. Ex. 1 at 3

¹⁸ Resp. Ex. 1 at 3.

¹⁹ Resp. Ex. 1 at 3.

²⁰ Resp. Ex. 1 at 3.

²¹ Resp. Ex. 1 at 4.

²² Resp. Ex. 1 at 4.

portion of a test showed the presence of other substances, such as PCP, that she never had contact with. She acknowledged, however, that the amount of these substance was below the threshold amount and never confirmed through the confirmation testing.

IV. ANALYSIS

Staff alleges that Respondent violated the Agreed Order by failing to abstain from the use of alcohol, and, therefore, Respondent violated Texas Occupations Code section 301.452(b)(1) and (b)(10). Respondent asserts that she did not ingest any alcohol and any use of alcohol was unintentional and only the result of incidental use.

Staff met its burden to establish that Respondent used alcohol in contravention of the Agreed Order. The test results demonstrate that Respondent tested positive for alcohol metabolites which are indicators of alcohol consumption. The evidence demonstrates by a preponderance of the evidence that the levels of EtG and EtS in the samples provided by Respondent are not the result of the incidental use of hand sanitizer or eating food cooked in alcohol. Both Mr. Collie and Mr. Fuller testified that the results are indicative of intentional ingestion and not the result of incidental use. Mr. Collie testified that a EtG threshold of 500 ng/ml would be sufficient to screen for incidental use, and the EtG levels in all the tests were in excess of 500 ng/ml. Also, the January 17, 2022, test resulted in a EtG level surpassing the upper limits of MedTox's testing calibrations—a result of greater than 10,000 ng/ml. This is over 40 times the 250 ng/ml threshold used by MedTox and even over 20 times the 500 ng/ml threshold discussed by Mr. Collie.

Respondent's explanation fails to account for the sharp increase between January 10, 2022, and January 17, 2022. The January 17th levels cannot be explained by a New Year's Eve dinner, use of hand sanitizer, or any other incidental use of alcohol, because EtG and EtS remain present for up to 80 hours after consumption. Based on the evidence, Respondent failed to abstain from the use of alcohol on at least three separate occasions. Therefore, Respondent violated the Agreed Order.

The failure to comply with the Agreed Order subjects Respondent to discipline under Texas Occupations Code section 301.452(b)(1). Additionally, Respondent is subject to discipline under Texas Occupations Code section 301.452(b)(10) for unprofessional conduct in the practice of nursing that is likely to deceive, defraud, and injure a patient or the public, because the Board defines unprofessional conduct to include a violation of a Board order.²³

The ALJ finds that a second tier, sanction level II disciplinary action is appropriate under either provision. Neither the first or third tiers are applicable in this cause as the first tier is limited to isolated failures of procedural rules and the third tier is reserved for conduct resulting in serious harm to a patient or public. In this case, the violation comprises not an isolated procedural violation but multiple failures to comply with a substantive requirement in a prior Board order. However, the evidence does not establish harm to a patient and the public or justify a tier three sanction. Instead, a second-tier sanction is appropriate.

²³ 22 Tex. Admin. Code 217.12(11)(B). Staff also asserts that Respondent violated section 301.452(b)(10) because unprofessional conduct includes "a positive drug screen for which there is no lawful prescription." Because unprofessional conduct includes Respondent's failure to comply with a Board order for the same conduct, it is not necessary to determine whether Respondent's alcohol screens constitute drug screens under the Board's rules.

Within the second tier for either provision, sanction level II is appropriate because of the aggravating factors (*e.g.*, multiple violations and involvement of alcohol) and Respondent's prior disciplinary history. Specifically, in the Disciplinary Matrix, under section 301.452(b)(1), the sanction level I in the second tier office states: "Violations of stipulations that are related to alcohol or drug misuse will result in next higher administrative sanction [sanction level II] (ex: a violation of . . . a probated suspension order may result in an Enforced Suspension until the nurse receives treatment and obtains one (1) year of sobriety and probation of the license with . . . drug stipulations for three (3) years)." ²⁴

Furthermore, a higher sanction level is warranted given the timing of the violations. The Board gave Respondent an opportunity through the Agreed Order to demonstrate her fitness to practice in response to the previous disciplinary issues. Respondent violated the Agreed Order multiple times within three months. This conduct justifies a more severe sanction.

Accordingly, the ALJ recommends an enforced suspension of Respondent's license until Respondent shows completion of treatment and counseling requirements and provides verifiable evidence of one year of sobriety. Subsequently, Respondent's license should be on probated suspension for three years requiring direct supervision by another nurse for the first year and indirect supervision for the second and third years. Other stipulations similar to those included in the Agreed Order are also appropriate, such as requirements to: notify

²⁴ 22 Tex. Admin. Code § 213.33(b).

present and future employers of the Board's order; have employers notify the Board of all employment changes; have employers provide quarterly reports to the Board; not accept critical care, float, on-call, or night shifts; abstain from use of alcohol and controlled substances; submit to periodic drug and alcohol screens to test compliance, which will be more frequent in the first year of the order; be prohibited from issuing narcotics; and attend support meetings and take classes in nursing jurisprudence and ethics and such other topics as the Board deems beneficial.

V. FINDINGS OF FACT

1. Shivonne Marie Hargis (Respondent) received Licensed Vocational Nurse (LVN) License No. 315193 from the Texas Board of Nursing (Board) in 2013.
2. In November 2021, the Board issued an agreed Board order (Agreed Order) that required Respondent to abstain from the use of alcohol, unless prescribed by a licensed practitioner for a legitimate purpose.
3. On January 10, 2022; January 17, 2022; and February 22, 2022, Respondent submitted urine samples that tested positive for ethyl glucuronide (EtG) and ethyl sulfate (EtS), which are metabolites of alcohol.
4. Incidental use of alcohol, such as using an alcohol-based hand sanitizer or mouthwash or eating a meal cooked in alcohol, may result in the presence of EtG and EtS in small amounts.
5. The testing laboratory sets a threshold level designed to reduce the risk of a positive test as a result of incidental use.
6. On January 17, 2022, Respondent's EtG level was greater than 10,000 ng/ml, which was at least 40 times the threshold level of 250 ng/ml used to screen for EtG.

7. Respondent's January 17th EtG and EtS levels are not explainable through incidental use.
8. Respondent's January 10th and February 22nd EtG and EtS levels were elevated beyond the laboratory's threshold. It is unlikely that Respondent's EtG and EtS levels were the result of incidental use.
9. Respondent ingested or consumed alcohol on at least three occasions on or near the days Respondent submitted urine samples for analysis: January 10, 2022; January 17, 2022; and February 22, 2022.
10. Respondent did not have a prescription to use alcohol from a licensed practitioner.
11. Based on these violations of the Agreed Order, the Board issued an Order of Temporary Suspension against Respondent on March 25, 2022.
12. On March 28, 2022, the staff (Staff) of the Board sent Respondent a notice of a probable cause hearing. On March 29, 2022, Staff sent Respondent an amended notice of the probable cause hearing.
13. On April 6, 2022, State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Robert Pemberton convened the probable cause hearing in this cause.
14. On April 7, 2022, ALJ Pemberton issued Order No. 2 continuing the temporary suspension of Respondent's license pending a final Board order.
15. Staff issued its First Amended Notice of Final Hearing to Respondent on April 26, 2022. Together, SOAH Order No. 2 and the First Amended Notice of Hearing 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. SOAH ALJ Brent McCabe convened the hearing on the merits via Zoom videoconference on May 17, 2022. Assistant General Counsel JoAnna Starr

represented Staff. Respondent appeared and represented herself. The record closed at the conclusion of the hearing.

VI. 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. 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 pursuant to Texas Occupations Code section 301.452(b)(1) because she failed to comply with an order of the Board. The failure to comply with a Board order constitutes unprofessional conduct and subjects Respondent to sanction pursuant to Texas Occupations Code section 301.452(b)(10) and the Board's rule found at 22 Texas Administrative Code section 217.12(11)(B).
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 offenses; the involvement of alcohol; and Respondent's prior disciplinary history. 22 Tex. Admin. Code § 213.33(b), (c)(6).

9. Respondent did not establish any mitigating factors to be considered by the Board. 22 Tex. Admin. Code § 213.33(b)-(c).

VII. ALJ RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board impose an enforced suspension of Respondent's license until Respondent shows completion of treatment and counseling requirements and provides verifiable evidence of one year of sobriety. Subsequently, Respondent's license should be on a three-year probated suspension requiring direct supervision by another nurse for the first year and indirect supervision for the second and third years. The ALJ also recommends that the Board's order include stipulations to require that Respondent: notify present and future employers of the Board's order; have employers notify the Board of all employment changes; have employers provide quarterly reports to the Board; not accept critical care, float, on-call, or night shifts; abstain from use of alcohol and controlled substances; submit to periodic drug and alcohol screens to test compliance, which will be more frequent in the first year of the order; be prohibited from issuing narcotics; and attend support meetings and take classes in nursing jurisprudence and ethics and such other topics as the Board deems beneficial.

SIGNED JULY 13, 2022.



BRENT MCCABE
Presiding Administrative Law Judge

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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

August 19, 2022

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: SOAH Docket No. 507-22-2199; Texas Board of Nursing v.
Shivonne Marie Hargis**

Dear Ms. Thomas:

Please be advised that the time period to file exceptions to the Proposal for Decision (PFD) issued in the above-referenced hearing 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.

A handwritten signature in black ink, appearing to read "BMcCabe", is written over a horizontal line.

Brent MCCABE,
Presiding Administrative Law Judge

cc: JoAnna Starr, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 - **VIA E-FILE TEXAS**
Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe, Tower III, Suite 460, Austin, TX 78701 - **VIA E-FILE TEXAS**
Shivonne Marie Hargis, 841 County Road 1555, Bonham, TX 75418 - **VIA E-FILE TEXAS**