

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 P. Brown
Executive Director of the Board

DOCKET NUMBER 507-22-2690

**IN THE MATTER OF
ASHLEY AVALOS,
PETITIONER FOR REINSTATEMENT**

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

OPINION AND ORDER OF THE BOARD

TO: ASHLEY AVALOS
602 E GRANT AVE
MORTON, TX 79346

LINDA BRITE
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 Petitioner'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 Petitioner, 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 Board agrees with the ALJ that licensure reinstatement is statutorily mandated in this case pursuant to Tex. Occ. Code §301.4535.

IT IS, THEREFORE, ORDERED THAT the Petition for Reinstatement of License Number 317009 made by ASHLEY AVALOS is 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.

FURTHER, pursuant to the Occupations Code §301.4535(c), Petitioner is not eligible to petition for reinstatement of licensure until at least five (5) years have elapsed from the date the PETITIONER completes and is dismissed from community supervision or parole. Further, upon petitioning for reinstatement, PETITIONER must satisfy all then existing requirements for relicensure.

Entered this 20th day of October, 2022.

TEXAS BOARD OF NURSING

A handwritten signature in cursive script, appearing to read "Katherine A. Thomas".

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

Attachment: Proposal for Decision; 507-22-2690 (July 13, 2022)

FILED
507-22-2690
7/13/2022 10:15 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

ACCEPTED
507-22-2690
7/13/2022 10:46 AM
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 St., Suite 3-460
Austin, TX 78701

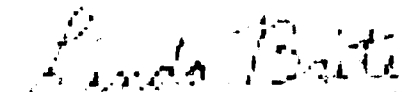
VIA EFILE TEXAS

**Re: SOAH Docket No. 507-22-2690; TEXAS BOARD OF NURSING v.
ASHLEY AVALOS**

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 <https://www.soah.texas.gov/administrative-rules-and-laws>.



Linda Brite

Presiding Administrative Law Judge

Enclosure

cc: JoAnna Starr, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe St., Suite 3-460, Austin, TX
78701 - VIA E-FILE TEXAS
Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe St., Suite 3-460, Austin, TX
78701 - VIA E-FILE TEXAS
Ashley Avalos, 602 E. Grant Ave., Morton, TX 79346 - VIA E-FILE TEXAS

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS BOARD OF NURSING,
PETITIONER
V.
ASHLEY AVALOS,
RESPONDENT**

PROPOSAL FOR DECISION ON SUMMARY DISPOSITION

The staff (Staff) of the Texas Board of Nursing (Board) seeks to deny the reinstatement of the licensed vocational nurse (LVN) license of Ashley Avalos (Respondent) because she pleaded guilty to Injury to a Child, Elderly Individual, or Disabled Individual, a felony. Staff filed a Motion for Summary Disposition (MSD) requesting a proposal for decision in its favor as a matter of law. Respondent did not file a response.¹ After considering the motion, the summary disposition

¹ See 1 Tex. Admin. Code § 155.505(b)(2).

evidence, and the applicable law, the Administrative Law Judge (ALJ) concludes that Staff's MSD should be granted. Therefore, the ALJ recommends that the Board deny Respondent's application for reinstatement. The hearing set for August 18, 2022, is **CANCELED**.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On May 13, 2022, Staff referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing. On May 25, 2022, Staff filed and served Respondent with Staff's MSD and supporting evidence. On May 26, 2022, Staff filed and served Respondent with its Notice of Hearing, along with the Formal Charges.

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

II. SUMMARY DISPOSITION EVIDENCE

Staff presented uncontested summary disposition evidence (Staff Exhibits 1, 2, and 3) establishing the following relevant facts:

- Respondent holds inactive licensed vocational nurse (LVN) license number 317009 issued by the Board on June 26, 2017.²
- On February 7, 2019, Respondent pleaded guilty to the second degree felony offense of Injury to a Child, Elderly Individual, or Disabled

² Staff Ex. 1.

Individual in the 286th District Court in Cochran County, Texas, a violation of Texas Penal Code section 22.04(c), for which she received five years' deferred adjudication probation.³

- On May 23, 2019, Respondent signed a Voluntary Surrender Order, in which she relinquished her ability to practice as an LVN and which included language stating that she would be ineligible for reinstatement until at least five years from completion or dismissal from community supervision or parole, pursuant to Texas Occupations Code § 301.4535(b)-(c).⁴
- On January 26, 2022, Respondent was released early from her deferred adjudication community supervision.⁵
- On February 14, 2022, Respondent petitioned the Board for reinstatement of her license.⁶

III. APPLICABLE LAW

Summary disposition of a contested case may be granted, in full or in part, without the necessity of a hearing on the merits if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion.⁷

³ Staff Ex. 2.

⁴ Staff Ex. 3.

⁵ Staff Ex. 2.

⁶ Staff Ex. 2.

⁷ 1 Tex. Admin. Code § 155.505(a).

Under Texas Occupations Code section 301.4535(b), the Board must revoke a nursing license on a nurse's plea of guilty to the crime of intentionally, knowingly, or recklessly causing injury to a child, elderly individual, or disabled individual pursuant to Texas Penal Code § 22.04. After the plea of guilty, the person is not eligible for reinstatement of a license to practice nursing before "the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole."⁸

IV. ANALYSIS AND RECOMMENDATION

The uncontroverted summary disposition evidence shows that Respondent pleaded guilty to Injury to a Child, Elderly Individual, or Disabled Individual, which is an offense under Texas Penal Code § 22.04.⁹ Respondent was released from her deferred adjudication community supervision on January 26, 2022. Therefore, as a matter of law, Respondent's inactive license not eligible for reinstatement until January 26, 2027, under Texas Occupations Code § 301.4535(c).

For these reasons, Staff's MSD is **GRANTED**, and the ALJ recommends that the Board deny Respondent's petition for reinstatement.

⁸ Tex. Occupations Code § 301.4535(c).

⁹ Staff Ex. 2.

V. FINDINGS OF FACT

1. Ashley Avalos (Respondent) holds inactive licensed vocational nurse (LVN) license number 317009 issued by the Texas Board of Nursing (Board).
2. On February 7, 2019, Respondent pleaded guilty to the second degree felony offense of Injury to a Child, Elderly Individual, or Disabled Individual in the 286th District Court in Cochran County, Texas, a violation of Texas Penal Code § 22.04(c), for which she received five years' deferred adjudication probation.
3. On May 23, 2019, Respondent signed a Voluntary Surrender Order, in which she relinquished her ability to practice as an LVN and which included language stating that she would be ineligible for reinstatement until at least five years from completion or dismissal from community supervision or parole.
4. On January 26, 2022, Respondent was released early from her deferred adjudication community supervision.
5. On February 14, 2022, Respondent petitioned the Board for reinstatement of her license.
6. On May 13, 2022, the Board's staff (Staff) referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
7. On May 25, 2022, Staff filed and served Respondent with Staff's motion for summary disposition and supporting evidence. Respondent did not file a response to the motion.
8. On May 26, 2022, Staff filed and served its Notice of Hearing, notifying Respondent of a hearing scheduled for August 18, 2022. 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.

VI. CONCLUSIONS OF LAW

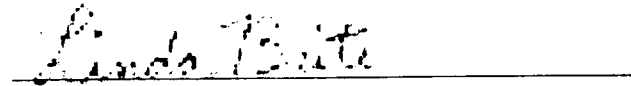
1. The Board has jurisdiction over this matter. Tex. Occ. Code ch. 301.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 301.454.
3. Respondent received timely and adequate notice of the allegations against her. Tex. Gov't Code §§ 2001.051-.052.
4. Summary disposition shall be granted on all or part of a contested case if the pleadings, the motion for summary disposition, and the summary disposition evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law on all or some of the issues expressly set out in the motion. 1 Tex. Admin. Code § 155.505(a).
5. Injury to a Child, Elderly Individual, or Disabled Individual is an offense under Texas Penal Code § 22.04.
6. Respondent is not eligible to reinstate her LVN license before the fifth anniversary of the date she successfully completed and was dismissed from community supervision or parole for an offense described by Texas Occupations Code § 301.4535(a)(7). Tex. Occ. Code § 301.4535(c).

VII. RECOMMENDATION

Based on the above findings of fact and conclusions of law, the ALJ recommends that the Board deny Respondent's petition to reinstate her LVN license.

SIGNED JULY 13, 2022

ALJ Signature:

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

Linda Brite,

Presiding Administrative Law Judge

FILED
507-22-2690
7/29/2022 2:21 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

ACCEPTED
507-22-2690
8/1/2022 8:45 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jessie Harbin, CLERK

State Office of Administrative Hearings

Chief Administrative Law Judge

July 29, 2022

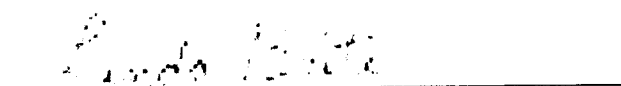
Katherine A. Thomas, M.N., R.N.
Executive Director
Texas Board of Nursing
333 Guadalupe St., Suite 3-460

VIA EFILE TEXAS

Re: SOAH Docket No. 507-22-2690; TEXAS BOARD OF NURSING v.
ASHLEY AVALOS

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.



Linda Brite,
Presiding Administrative Law Judge

No Exceptions Letter

July 29, 2022

Page 2 of 2

CC:

JoAnna Starr, Assistant General Counsel, Texas Board of Nursing, 333 Guadalupe St., Suite 3-460, Austin, TX 78701 - **VIA E-FILE TEXAS**

Jena Abel, Deputy General Counsel, Texas Board of Nursing, 333 Guadalupe St., Suite 3-460, Austin, TX 78701 - **VIA E-FILE TEXAS**

Ashley Avalos, 602 E. Grant Ave, Morton, TX 79346 - **VIA E-FILE TEXAS**